UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for	)	
Puerto Rico,	)	(Jointly Administered)
	)	
as representative of	)	
	)	
The Commonwealth of Puerto Rico *et al.*,	)	January 29, 2020
	)	
Debtors,	)	

In Re:	)	Docket No. 3:17-BK-4780(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for	)	
Puerto Rico,	)	(Jointly Administered)
	)	
as representative of	)	
	)	
Puerto Rico Electric Power Authority,	)	
	)	
Debtor,	)	

Sciemus Limited, *et al.*, Plaintiffs, v. Financial Oversight and Management Board for Puerto Rico, *et al.*, Defendants.	Docket No. 3:19-AP-00369(LTS) *in 3:17-BK-4780(LTS)*

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Mediation Team:	Honorable Chief U.S. Bankruptcy Judge Barbara J. Houser
For The Commonwealth of Puerto Rico, *et al.*:	Mr. Martin J. Bienenstock, PHV Ms. Laura Stafford, PHV Mr. Michael A. Firestein, PHV Mr. Lary A. Rappaport, PHV
For the U.S. Trustee Region 21:	Ms. Monsita Lecaroz Arribas, AUST
For the Official Committee of Unsecured Creditors:	Mr. Luc A. Despins, PHV Mr. G. Alexander Bongartz, PHV

APPEARANCES, Continued:

For the Puerto Rico Fiscal Agency and Financial Advisory Authority:	Mr. Peter Friedman, PHV Mr. Luis C. Marini Biaggi, Esq.
For Assured Guaranty Corp. and Assured Guaranty Municipal Corp:	Mr. William J. Natbony, PHV Mr. Casey J. Servais, PHV
For Financial Guaranty Insurance Company:	Mr. Martin A. Sosland, PHV
For Ambac Assurance Corporation:	Ms. Atara Miller, PHV
For Salud Integral en la Montana:	Mr. John E. Mudd, Esq.
For National Public Finance Guarantee Corp.:	Mr. Robert Berezin, PHV
For Cobra Acquisitions LLC:	Mr. Thomas P. McLish, PHV Appearing from New York Mr. Fernando Van Derdys, Esq.
For AmeriNational Community Services, LLC, as servicer for the GDB Debt Recovery Authority:	Mr. Nayuan Zouairabani, PHV
For Puerto Rico Electric Power Authority:	Mr. Joseph Davis, PHV

Proceedings recorded by stenography. Transcript produced by CAT.

I N D E X

San Juan, Puerto Rico

January 29, 2020

At or about 9:38 AM

* * *

THE COURT: Again, buenos dias. Welcome counsel, parties in interest, and members of the press and public here in San Juan, those observing here and in New York and telephonic participants. As always, it is good to be back here. This has been a very challenging month for Puerto Rico, and we have in mind the people who have been severely effected by the earthquakes.

I remind those present in the courtrooms and listening on the phone line that, consistent with court and judicial conference policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceedings. Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents already loaded on the device. All audible signals, including vibration features, must be turned off.

No recording or retransmission of the hearing is permitted by any person, including but not limited to the parties or the press. Anyone who is observed or otherwise

found to have been texting, e-mailing or otherwise communicating with a device from a courtroom during the court proceeding will be subject to sanctions, including but not limited to confiscation of the device and denial of future requests to bring devices into the courtroom.

Our timing this morning is from 9:30 to noon, and then from 1:00 to five o'clock, if necessary. And we'll begin with the Oversight Board's status report.

MR. BIENENSTOCK: Thank you, Judge Swain. Good morning.

THE COURT: Good morning, Mr. Bienenstock.

MR. BIENENSTOCK: Martin Bienenstock of Proskauer Rose for the Oversight Board, for itself and as representative of the Title III debtors.

In respect of Your Honor's first topic for the status report, the general status and activities of the Oversight Board, especially since the December hearing, the Oversight Board's attention and activities have centered on, among many subjects, monitoring fiscal plan implementation, mediation, plans of adjustment and litigation.

We know the Court is very aware of the confidentiality restrictions concerning mediation, so in that respect, I simply want to emphasize what I'm allowed to say, which is the mediation is very much in progress. It is possible, but I can't promise, that during the next month

there will be some public announcements that would manifest that progress.

With respect to the earthquake and earthquake swarm, the Board immediately made available the budgetary reserves established in the certified budgets for fiscal years '19 and '20, totaling 260 million dollars, for use in the emergency situation. As the Court may recall, our budgets have a growing emergency reserve, so it's cumulative, and that's why I'm mentioning the two budgets.

The chairman and executive director of the Oversight Board together have made three visits to the south of Puerto Rico, including some six municipalities. The Governor provided immediate support of two million dollars to the hardest hit municipalities and 250,000 dollars to others with damage.

President Trump has made the disaster declaration, enabling FEMA individual and public assistance to those in need who qualify. There are 16 municipalities included in the disaster declaration.

Earthquakes continue. Recently, we had about 17 over 2.5, including one that registered 5.0 and rocked many homes, including the Oversight Board's offices in San Juan. There is no end in sight, though they have slowed and are reduced in number since the peak.

Thousands remain in tents constructed by the National

Guard and other shelters, some facing new flooding given the weather over the last weekend. Schools in the southwest remain closed, with many structurally uninhabitable. Other schools in the north, which have been deemed structurally safe, are beginning to reopen. Hundreds of homes and public buildings have been damaged, including prisons, schools, bridges and roads. There are hundreds of millions of dollars of damage.

In respect of ERS, Your Honor, discovery is continuing, and the disputes regarding the scope of the bondholders' lien and ERS assets and whether the issuance of ERS bonds was ultra vires. The Oversight Board and the bondholders groups are discussing a modified discovery schedule.

The Oversight Board is also awaiting decision from the First Circuit concerning the bondholders' appeal of this Court's Section 552(a) ruling. In addition, briefing is ongoing and the bondholders' appeal of the Court's Order denying appointment of the bondholders as trustees of ERS under Section 926(a) of the Bankruptcy Code, with oral arguments scheduled for the beginning of March.

In respect of PRIDCO's RSA and anticipated Title VI, as the Oversight Board informed the Court at the December hearing, PRIDCO has public bonds in the outstanding amount of approximately 150 million dollars in principal and 15 million

dollars in accrued interest.

As AAFAF notified the Court in the October hearing, AAFAF entered into a Restructuring Support Agreement with over two-thirds of those bondholders. While the Oversight Board has not been formally asked to approve the RSA as a qualifying modification, the Board's professionals are working with AAFAF's professionals to understand the implementation of the RSA, corresponding economic measures and the proposed fiscal plan for PRIDCO, which is currently being revised based on comments provided by the Oversight Board. Should the revised fiscal plan meet the Oversight Board's requirements and the Oversight Board issue a voluntary agreement certification relating to the PRIDCO RSA, the parties aim to commence a Title VI qualifying modification for PRIDCO, not before the end of the first quarter of 2020.

In respect of relations among the Oversight Board and the Commonwealth and Federal Government, in respect to the Commonwealth relations, our relationship with the Governor and government remains collaborative, though they have been overwhelmed in the response to earthquakes in the south, thus delaying much other routine work.

In terms of the Federal Government relations with Federal Government, obviously having many different speaking parts, our relationship with the Federal Government is status quo. The Federal Government, in this case HUD, inserted the

Oversight Board into the disaster funds process to ensure the use of the funds is consistent with both the certified fiscal plan and certified budget in recognition of the Oversight Board's oversight role.

Moreover, many congressional representatives signed one or more public letters expressing concern the agreements reached prior to the earthquakes must be reviewed in light of the major cost to the island and the clear lack of resiliency of the infrastructure. The Board will not tell the Court any proposed plan of adjustment is feasible if it believes to the contrary, but so far it has not determined there is sufficient basis to change course.

In terms of disaster funding, in response to the recent earthquakes, President Trump has signed a major disaster declaration making federal funding available, and the U.S. House Appropriation Subcommittee announced the introduction of a supplemental spending bill that will provide an additional 3.35 billion dollars in disaster relief. In addition, the Federal Government has indicated it will impose new requirements related to 8.2 billion dollars in HUD Community Development Block Grant disaster relief funds.

In respect to FEMA, FEMA has agreed to allow the Commonwealth to use the procedure under Section 406 of the Stafford Act for noncritical infrastructure projects, which does not require preapproval and, therefore, enables projects

to get under way more quickly. FEMA has also responded to the recent earthquakes. The Oversight Board welcomes continued communication and collaboration with FEMA to facilitate effective post-hurricane and post-earthquake recovery.

In terms of the PREPA RSA, the Oversight Board received a letter from several members of Congress dated January 23, 2020, regarding the terms of PREPA's proposed RSA. The Oversight Board is reviewing the letter and welcomes continued communication with the Federal Government regarding the RSA.

Your Honor also put the pro se claim response methodology on the list, and if it's okay with the Court, I will defer that to Ms. Stafford, my colleague, because otherwise I'll just duplicate and steal her thunder, which I'm not good at doing.

THE COURT: Very well.

MR. BIENENSTOCK: So if I can move on to the last topic, Your Honor asked for a report on the anticipated timing for legislative approval of the policies embodied in the PREPA 9019 motion. Your Honor's placement of this topic on the report list was prescient, as the Board and government have been engaged in constructive discussions. And the Governor and AAFAF met last week with Puerto Rico legislative leaders to discuss, among other things, PREPA'S debt restructuring.

The government parties and the supporting holders have worked on draft legislation with the intent that it be presented to the legislature for consideration during the current session, which began on January 14, 2020, and ends June 30, 2020. We remain hopeful the legislation will be submitted in the coming weeks.

As the Court knows, the legislative process is an iterative one, and predicting legislative timing and outcomes is far from an exact science. Based on this uncertainty, the Oversight Board will seek an extension of the briefing schedule and then adjournment of the March 31 hearing on the PREPA RSA to allow time for the parties to make progress with respect to the legislation. We are in discussions with the supporting parties on this schedule, and we'll file an urgent motion as soon as we can.

THE COURT: And since you do see this coming and there's at least a month between now and the March target date, when you file the urgent motion, please don't make it one on which I have to declare a briefing schedule that's 72 hours, and 48 hours, over a weekend. People get really annoyed about that, and me, too. So please do it with sufficient lead time to do this in a civilized way.

MR. BIENENSTOCK: Absolutely, Your Honor. And hopefully we haven't been guilty of that, but we don't like it either.

THE COURT: I'm not tagging anybody in particular, but there are a whole lot of urgent motions whose urgency seems to arise from the date on which they were filed as opposed to context, so I'd be grateful if everybody would be mindful of that.

MR. BIENENSTOCK: Thank you, Your Honor. And although Your Honor asked for the report, so we would have said anyway, part of the reason for wanting to raise that is we know the Court put aside time March 31, and better to have more notice than less for our request.

THE COURT: I do very much appreciate that. As you know, there are logistics all around, including with all of the Court personnel, and so I appreciate the advanced notice.

MR. BIENENSTOCK: Unless the Court has other questions, that is the end of our report for this morning.

THE COURT: Thank you. Except for Ms. Stafford.

MR. BIENENSTOCK: Right.

THE COURT: Thank you, Mr. Bienenstock.

MS. STAFFORD: Good morning, Your Honor.

THE COURT: Good morning, Ms. Stafford.

MS. STAFFORD: Good morning. Laura Stafford from Proskauer on behalf of the Financial Oversight and Management Board. Thank you, Your Honor, for the opportunity to address the Court regarding the pro se responses to the Omnibus claim

objections that have been received by the Court.

As Your Honor is aware, hundreds of responses to these claim objections were filed by pro se parties just in the past month. We are in the process of reviewing those responses that have been received to date.

Currently, upon entry of the Order regarding administrative claims reconciliation procedures which the Court approved at the October Omnibus hearing, we anticipate that the great majority of those claimants, at least 80 percent, and likely far more than that, will be referred to the Commonwealth's administrative claims reconciliation processes, or to the alternative dispute resolution procedures, in the event that Your Honor approves the motion that's set for hearing later today.

We're continuing to review the responses that are currently on file, and if it is determined that any of these responses either do not contain sufficient information for or are otherwise inappropriate for either of those two procedures, or if they cannot be resolved in some other manner, we intend to proceed with our objections to those claims at the March 4th, 2020, Omnibus hearing.

With respect to the process going forward, I'm happy to report that we are nearing the end of our high volume set of Omnibus objections to deficient claims that assert liabilities based on unspecified Commonwealth laws or salary

demands, services provided and pensions accrued, the type of Omnibus objections that have taken up the bulk of the objections set for today and for the December Omnibus.

As Your Honor is no doubt aware, earlier this month we filed an additional 30 Omnibus Objections to Deficient Claims, which are currently set for hearing on March 4th. In the coming weeks, we anticipate filing an additional approximately 13 Omnibus Objections to Deficient Claims, which will be scheduled for hearing on April 22.

We are continuing to review additional claims that may fall into these buckets as well of deficient claims, and we may need to file additional deficient Omnis beyond those 13 that we're expecting. However, we do expect that the number of deficient Omnibus objections, as well as the number of claims scheduled on each objection, will start to decrease over the coming months. Each of these objections have been and will be filed, of course, in accordance with the procedures approved by the Court at the November 2018 and the June 2019 Omnibus hearings.

We also appreciate Your Honor's suggestion that a response form be developed to help streamline and focus the processing of pro se responses. In that regard, we would note that the mailing that was sent to each of the claimants last summer and over the course of the fall requests the information that the debtors need from these parties in order

to be able to reconcile these claims. And we would be happy to include a simplified version of that mailing with any future claim objections, which may help focus claimants' responses so that they can provide the information we actually need in order to determine what procedure may or may not be appropriate for their claim. In addition, we're happy to revise our noticing procedures, however, as necessary, to reduce the number of defective filings which we understand present a burden to the Court and the court clerks.

For example, we noticed that a number of defective filings -- or defective pleadings that were filed over the next few weeks lacked signatures, and both the claim objection notices and the proposed simplified form can reinforce the requirement that claimants must sign their responses before they can be accepted for filing. And of course we're happy to take direction from the Court if there are any further revisions to the notices or to the objections that the Court would like us to make.

THE COURT: Well, I appreciate this report in all of its aspects and your agreement that some attention to the form in which information is elicited can be helpful. I think you may see hitting the docket an Order that I prepared relating to the responses that we've gotten from people whose claims haven't been objected to yet, which is an interesting development. There are a number of those. And for what it's

worth, our suspicion is that people are seeing their neighbors getting some notice and deciding that they're going to volunteer some information and copying information from their neighbors' responses.

And so our Order is going to ask you to file an informative statement by the middle of February indicating generally what you're intending to do with those. And I was comforted to hear that you have a plan for some 80 percent of these pro se responses. And I think it's in all of our interests that, to the extent the responses are not being channeled into other mechanisms, that the number of truly disputed ones that need to be heard in any given Omni is kept to a manageable amount of traffic, so that if further adjournments are required to do that, I'm obviously open to having you do that.

MS. STAFFORD: Okay.

THE COURT: And then in a few minutes, before we talk about -- actually, I guess I can do it now. The other big problem is the inclusion of sensitive personal identifiers in filings. People seem to get the objections and then, you know, open up the drawers with the driving licenses and everything else and start copying things and sending them to the Court. And we are not in the position, as a court, to start redacting things. And many of these filings are voluminous.

And so I will state for the record and for the purpose of finding on the right of access issues, that given the large volume of responses and the Court's limited personnel resources, we have determined to seal pro se submissions that contain sensitive personal information, and give access to those sealed filings to designated attorneys representing the Oversight Board in the first instance. And we also give notice to the filer of that. And the docket will reflect that there is a sealed exhibit containing sensitive personal information, which is sometimes pervasive through a 200 page filing.

This is the most narrowly tailored means available to the Court to ensure that the pro se claimants' responses will be filed in a timely manner, while protecting the sensitive personal information. And we do give them advice in our Notice of Deficiency that they should redact and refile, but sometimes they just send us more, which doesn't help because then that gets --

MS. STAFFORD: Right.

THE COURT: -- sealed as well. So we do have a suggestion for some potential amelioration of these issues, which is to include language along the following lines in the claim objection notice:

All materials submitted to the Court in response to claim objections may be publicly filed and accessible to any

member of the public. Therefore, in your submissions to the Court, do not include sensitive documents or information, like driver's licenses, passports, birth certificates, Social Security cards, sensitive medical information or confidential business information. Social Security numbers and taxpayer identification numbers should be redacted, that is, blacked out, except for their last four digits. Birthdays should be redacted, except for the year of an individual's birth. Minors' names should be redacted, except for their initials. And financial account numbers should be redacted, except for their last four digits. Any such sensitive or confidential information that you rely on in support of your claim must be provided directly to the debtors' counsel and will be kept confidential. And then give contact information for debtors' counsel so that that communication can take place off-line.

So that builds on information that you already had there, but it's an effort to make it a little bit more accessible to the lay people who are responding to the notice. So that is our suggestion and request, that you consider incorporating that kind of language.

MS. STAFFORD: That process makes a lot of sense to us, Your Honor. Thank you.

THE COURT: Thank you. So I have -- yes. I have no further questions for the Oversight Board.

MS. STAFFORD: Thank you, Your Honor.

THE COURT: Mr. Bienenstock.

MR. BIENENSTOCK: Your Honor, thank you.

I'm grateful to Mr. Despins for bringing something to my attention that -- I mentioned that in terms of the PREPA hearing, we would be filing a motion to change the hearing date and the briefing schedule, and Mr. Despins reminded me that our next brief is due February 3. So to avoid exactly what Your Honor said about a last minute, urgent motion, I wonder if we could have an adjournment for, say, three weeks? And it might be further changed based on whether there is an adjournment of the hearing or not and how long it is, but that would still have our pleading on file well before the currently scheduled hearing of March 31st.

THE COURT: So this is a reply that is due February 3rd?

MR. BIENENSTOCK: Our response to the objections to the RSA is due February 3.

THE COURT: And so that is basically the nature of the reply. But then, as I recall, there are further filings in the schedule after that filing -- so of course my concern will be that I don't end up with hundreds or thousands of pages of filings completed only a week before the hearing date. So if you are going to take that filing deadline out three weeks now, that's certainly going to require moving the hearing date.

And I have been trying in all of these adjournments to keep and maintain space for the Court to give necessary, thorough, and fair consideration of everything, and as we're moving into the schedule under the interim orders, as they may be adjusted -- as you know, my major issue processing load on these cases is increasing exponentially for the spring, so we'll need to keep that in mind in revised scheduling.

MR. BIENENSTOCK: I think for now, perhaps I should change it to two weeks or even one week so that there's time to file a motion that the Court doesn't have to deal with over the weekend, and the parties don't have to deal with it.

THE COURT: All right. So let's make it two weeks now. So that would be until February 17 --

MR. BIENENSTOCK: Okay.

THE COURT: -- for the response to the objections to the RSA.

MR. BIENENSTOCK: Thank you.

THE COURT: Is there any major panicky objection to my extending that two weeks? Mr. Natbony.

MR. NATBONY: Excuse me, Your Honor.

MR. BIENENSTOCK: Okay. Two things, Your Honor, that we agreed to: The other replies due should also have the same adjournment, and when we do move to change the hearing date, we will not use this extension as a basis to support our request.

THE COURT: Very well then. That -- I'm sorry.

MR. MOERS MAYER: One second, Your Honor.

MR. BIENENSTOCK: Your Honor, Mr. Moers' point is that -- I should just clarify. I was only talking about the pleadings responding to the objections to the RSA and then follow-up pleadings after that. I was not referring to a Motion to Dismiss that Mr. Moers' client is involved with. So they still have a February 3rd date. We have not asked to move that and Mr. Moers has not asked to move it.

THE COURT: Very good. So that this can be clear to everyone, will you file I guess you'd call it an informative motion, a proposed order, confirming the two-week adjournments of these two deadlines that I've granted --

MR. BIENENSTOCK: Sure.

THE COURT: -- on the record that I can then so order and enter into the docket?

MR. BIENENSTOCK: Yes. Thank you, Your Honor. We'll do that.

THE COURT: Thank you.

Mr. Moers is getting up again.

MR. MOERS MAYER: I don't think we have an issue, Your Honor.

MR. BIENENSTOCK: No. I assured Mr. Moers that our reply in the other matter he's referring to is also not being deferred. So we still have a February 3rd deadline for a

pleading, but it's not to reply to the objections. That's all.

THE COURT: Thank you for that clarity.

Mr. Despins.

MR. DESPINS: Just two minutes on PREPA. So obviously we consent to this short extension, and we consent to if the Board wants to adjourn the March 31st hearing, that's fine.

The only thing we want to raise with the Court, not asking for any ruling today, the litigators will discuss this, but we have to remember that the initial date was December 11, or something like that. The hearing date was supposed to be in December. The whole discovery was done on a fairly compressed schedule based on that hearing date, and everything was locked down, meaning no more declarations, nothing, based on that. Then it was adjourned to the end of January, then to March.

So, as I said, we have no problems with them pushing the dates out, but, you know, there are things that will be stale. I'll give you an example. We have declarations that assume a hearing in January, so of course those declarations are -- from a timing point of view, won't be accurate in whatever date is ultimately scheduled. So that's one example.

And so I want to make sure that -- and we will discuss that, and all that, so we're not asking the Court to

opine on that; but I just want to make sure that that's on your radar screen, because not everything will be stale, but some things are. Discovery that was taken in August or September, in May or June of this year may be still timely or not. It's unclear.

The other point I want to make, though, is that this issue of getting legislation to implement the RSA is not a novel issue. They've known about that for at least two years, when they signed the current RSA. And if you read the declarations, the main point is, assuming the Committee has great claims -- they don't say we have great claims, but assuming we did, there is just no time left to do this, because Judge Swain would have to rule. It would go to the First Circuit. It would take a year to do that.

I don't think they should be able to, and I'm not asking for a ruling on that, but to run the clock essentially for getting that legislation for more than a year now when they knew before they signed the RSA that they needed that legislation, and then to say, oh, by the way, we're out of time, this alternative does not make sense because there's no time left.

So to be continued, but I want to make sure that the Court has that also on your radar screen because we believe that that would be unfair, because this is something they've known about from the beginning, that they needed that

legislation. Why they have not sought that or obtained that before, I don't know. But clearly we cannot be in a position where they're arguing in June of this year that, well, if we had to litigate these issues, it would take six, seven months to get a decision from Your Honor, and to go to the First Circuit, when we could have done that starting in May of last year. So that's the point.

THE COURT: And I have been aware that one of the arguments has been that the -- that some of the argumentation in favor of the utility and necessity of settlement has been the time issue of being able to move forward quickly and not having litigation going on. And I know that your counter argument to that includes that that urgency is self-created to a certain extent. And so I assume that that argument will kind of get louder and more elaborated as we get later in time.

MR. DESPINS: That's all I wanted to mention.

THE COURT: So as to the heads up about potential requests for further discovery, Judge Dein and I will expect that both your direct discussions with other parties and any request to the Court will be clear, narrowly tailored and raised in a timely fashion.

Judge Dein, should I say anything else on that at this point?

HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: You

can emphasize that --

THE COURT: I emphasize that. There's three lines drawn underneath that.

MR. DESPINS: Okay. And as I said, many of the information may not be stale. Some categories may have changed over time.

That's all. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Natbony.

MR. NATBONY: Thank you, Your Honor. I appreciate Your Honor's granting of the short period of time and the caution about not having the urgent motions, because Assured will be in a position where we will be objecting to the moving of the hearing date, and we appreciate that opportunity to do so in a fulsome manner without having the rush of a 48-hour, 72-hour period.

With respect to Mr. Despins' argument about potentially the need for other declarations or discovery, I realize there is no formal motion before Your Honor, but obviously we take the position that there is no need for further discovery. There is no need for further declarations. We'll address that in any motion that's made.

And I also appreciate Mr. Bienenstock's representation that they won't use the short extension for their brief as a justification for the potential moving of an

adjournment date for the hearing.

Thank you, Your Honor.

THE COURT: Thank you.

Okay. My name generator just failed me, so please --

MR. BEREZIN: I will name myself, Your Honor. Robert Berezin of Weil Gotshal & Manges on behalf of National Public Finance Guarantee Corp.

THE COURT: Good morning, Mr. Berezin.

MR. BEREZIN: Thank you, Your Honor. National is a signatory to the PREPA RSA and, like Assured, doesn't support delay.

We would just point out that legislation is not required as a prerequisite to approve the RSA. It's not part of the RSA. It doesn't require legislative approval prior to the 9019 hearings. That is not something that is baked into the agreement between the parties, nor do we believe it's necessary. And that -- getting to a hearing as soon as possible is incredibly beneficial, we believe for PREPA, we believe for its Title III case -- its Title III case, as well as the other cases.

And we, too, appreciate the extra time and certainly do consent to the modification of the schedule to allow for briefing on that issue. And we certainly also oppose discovery, further discovery.

Thank you.

THE COURT: Thank you.

MR. DESPINS: Your Honor, there is a clarification here. I do not understand that the adjournment of the March 31st hearing could be contested, because if it is contested -- and the Court could decide, no, I'm sticking to March 31st, I've lost -- as to their reply, I've just lost two weeks because we have a reply to that as well.

I thought that maybe perhaps the selection of the date might be in limbo, but not that they would be opposing the adjournment, because then we are going to get prejudiced by the extension of their reply.

THE COURT: So Mr. Bienenstock, you started this by saying you discussed this concept with the supporting parties, and I also had the impression that there was some general recognition or agreement to an adjournment of the date of the 30th. If it's going to be fought, it will be fought, but tell me what your understanding is and what your expectation is.

MR. BIENENSTOCK: Okay. Our understanding was the bondholders' supporting parties are working with us on this. The monolines, as you've heard this morning, may oppose or may not. We need to have further discussions with them.

THE COURT: All right. Then for now -- it's January 29th today. Let's make this extension a one-week extension to February 10th.

MR. BIENENSTOCK: Okay.

THE COURT: And get your discussions done. And if you expect that there's going to be vigorous opposition, you know, get your urgent motion in sooner rather than later. And you can keep talking while that's pending, but if there's going to be, you know, serious issues raised about whether we can and should stay in March, then I'll need to engage those quite quickly.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: Thank you. Give me just one moment. Yes, February 10th, because you're adjourning the February 3rd deadline for a week?

MR. BIENENSTOCK: Yes, Your Honor.

THE COURT: So it's February 10th. And then the corresponding deadline would also go out another week. And you'll give me a proposed order.

MR. BIENENSTOCK: Yes, Your Honor.

THE COURT: Okay. So since we're discussing calendar issues right now, we did move around the date of the April Omni, and I believe it is now the 22nd. And I think someone mentioned in other remarks the Omni being the 27th, but I might just have misheard that.

So I'm just going to ask Ms. Selden to give me the definitive word on when the April Omni is. I think we had moved it from the 15th to the 22nd, or something like that.

So it's the 22nd? I don't have my calender.

We'll provide that word as soon as we have it.

MR. BIENENSTOCK: All right. Thank you.

THE COURT: Thank you.

So let's go on to the AAFAF report.

MR. FRIEDMAN: Good morning, Your Honor. Peter Friedman from O'Melveny & Myers. The AAFAF report will largely be handled by my colleague, Mr. Marini, in terms of the disaster relief update.

AAFAF is working on fiscal plan issues, working on PRIDCO issues. And one of the major things AAFAF is working on and we think is appropriate dovetails with the last sort of colloquy that went back and forth, which was AAFAF and the Governor are working with the legislature and doing something we think is extremely important, and our client thinks is extremely important to PREPA and the transformation process, which is paying due respect to the legislature's prerogatives in connection with approval of important legislation.

Those are the key issues on AAFAF's agenda right now. Other than that, we agree with, in terms of status issues, the things going on that Mr. Bienenstock referenced. And beyond that, I'll turn it over to Mr. Marini for the comprehensive report on the issues you specifically asked AAFAF to address with respect to disaster relief and reconstruction post-Maria and the earthquakes.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Friedman.

The date of the April Omni is April 22nd. And perhaps no one else was confused, but now it's clear. Thank you.

MR. MARINI BIAGGI: Good morning, Your Honor.

THE COURT: Good morning, Mr. Marini.

MR. MARINI BIAGGI: Luis Marini of Marini Pietrantoni Muniz on behalf of AAFAF.

First, Your Honor, I'd like to thank the Court for the opportunity to address again regarding the status of post hurricanes Irma and Maria infrastructure repairs and funding, as well as initial assessments after recent and continuing earthquakes. This is a topic that is of high importance to AAFAF, to Governor Wanda Vazquez, the people of Puerto Rico, after the devastation caused by the hurricanes over two years ago, and that suffered more recently through the numerous earthquakes that have affected the southern part of Puerto Rico since December 28, 2019.

Your Honor, the Oversight Board covered some of the aspects of the funding for the earthquakes. I'll try not to repeat myself, but I'll get into more detail in some of the areas. I'll first provide an overview of the initial damage assessments done to date as a result of the recent and ongoing earthquakes, as well as repair efforts. I'll then provide some additional detail on the damage assessments and projects

undertaken by PREPA, HTA and the Department of Education with the Commonwealth.

Finally, Your Honor will recall that AAFAF provided a detailed report on the status of post hurricanes Irma and Maria infrastructure repairs and funding during the last Omnibus hearing, so I'll limit my presentation only to new developments since then. Finally, Your Honor, I know that the date and information that I provide today has been obtained by AAFAF directly from PREPA, HTA, Department of Housing, Department of Education, and COR3.

Your Honor, since December 28, 2019, hundreds of earthquakes and aftershocks have been recorded in Puerto Rico, with the largest one of a magnitude of 6.4 occurring on January 7, 2020. These earthquakes and aftershocks have been concentrated in the southern part of Puerto Rico. Damage assessments are at a preliminary stage and are ongoing. As of January 15, there were a total of approximately 4,575 reported refugees, approximately 790 damaged houses, and more than 460 million dollars in preliminary and partial estimates of initial mitigation and emergency repair damages.

Funding and reconstruction efforts for the damages related to the earthquakes are at an early stage. The Governor has requested and the President has approved, as detailed by the Oversight Board, a declaration of -- major disaster declarations for 16 municipalities, which include

Adjuntas, Cabo Rojo, Corozal, Jayuya, Lajas, Lares, Maricao, San German, San Sebastian, Villalba, Ponce, Guanica, Guayanilla, Yauco, Utuado and Pinuelas. As the Oversight Board mentioned, this allows FEMA's public and private assistance programs to become available to these municipalities.

As to the school system, the Commonwealth has approximately 856 public schools. Inspections for these schools are ongoing. As of January 29, as of today, the last information that we have from the Department of Education is that approximately 383 schools have been deemed apt to reopen. And out of these, 228 schools have been inspected, evaluated, and certified by licensed engineers and are reopening. These schools are in the regions of Arecibo, Humacoa, San Juan, Bayamon and Caguas.

THE COURT: I'm sorry. Can you just explain again, the 386 number is what?

MR. MARINI BIAGGI: Three hundred and eighty-three are schools that, from initial inspections, they could potentially reopen soon; but out of those 383, 228 have been certified and are available to open immediately.

THE COURT: Thank you.

MR. MARINI BIAGGI: Inspections and evaluations for the remaining schools continue, and as of January 17th, approximately 668 schools have been inspected, with

assessments underway. The Department of Education expects to announce additional school openings soon.

While the inspections have not yet been completed, the Department of Education estimates that, as of now, approximately 212 schools may reopen partially, and 57 schools will need repairs prior to reopening. Current --

THE COURT: I'm sorry. Are you going on to a different topic or still on education?

MR. MARINI BIAGGI: I'm still on education, Your Honor.

Current inspections to the schools are being performed by licensed engineers and consist of visual inspections of structural and other defects. Estimates of damages as to the school system are preliminary, and range from 40 to 50 million for emergency and mitigation repairs, and in the range of 1.5 to 2 million for more permanent repairs. As of today, repairs have not yet started for the most part.

As to the schools in the southern part of Puerto Rico, and most affected by the recent earthquakes, the Department of Education is evaluating alternatives to serve the affected students and expects announcements to be made soon. Among the alternatives being considered are the use of mobile classrooms, tents, or renting temporary locations that comply with FEMA's requirements to accommodate the students

temporarily.

I'll move on. Unless Your Honor has any questions on education, I'll move on to PREPA.

THE COURT: I do have a follow-up. I'm glad you did speak a minute ago about the evaluation of alternatives to serve students. You know, it has been some time --

MR. MARINI BIAGGI: Right.

THE COURT: -- since the schools were supposed to reopen. And so am I correct in understanding that, as of now, there's not in place any sort of internet-based, camp-based or distance programming or curriculum being delivered to students by the faculty of these various schools?

MR. MARINI BIAGGI: Speaking as to the southern part of Puerto Rico only, because the schools that are reopened are not in the southern part of Puerto Rico. They are in the regions that I mentioned.

THE COURT: When did the schools in the north reopen?

MR. MARINI BIAGGI: Some were programmed to reopen last week, and I think there was an announcement yesterday. So they're in the process of reopening in the next few days. And there's some reopening at different stages as additional schools are announced.

THE COURT: And there hasn't been any alternative reprogramming in the north either as till now?

MR. MARINI BIAGGI: Right. And as to the south, the

last information I had as of yesterday are that, among the alternatives being considered are those I mentioned of bringing mobile classrooms, putting in tents, but those are not in place as of today.

THE COURT: And is there any timing expectation for delivery of any sort of instruction to these children in the south?

MR. MARINI BIAGGI: Your Honor, I can come back with more detail. The last that I have is that announcement should be made within the next one to two weeks in terms of how this will be structured for the south.

This is developing daily. There were schools announced yesterday that could open. There were another set that will announced today. So information is changing on a daily basis.

THE COURT: I understand that it's a very demanding situation, not only in education but in many, many aspects of human services. But, you know, I can tell you, I have a deep concern as a person and for the people --

MR. MARINI BIAGGI: Sure.

THE COURT: -- of Puerto Rico about the loss of education opportunities for the children. And then also particularly for just the displaced children in the camps having, you know, something to do in this stressful time. So if there is anything more that you can say in the near term

than you have said now, if you can file an informative motion, I would be grateful.

MR. MARINI BIAGGI: I will. And AAFAF and the government obviously share the Court's concern and are doing everything they can to remedy the situation. But I'll provide an update when new information becomes available as to the school systems.

THE COURT: Thank you. I'm grateful.

MR. MARINI BIAGGI: But I'll move on to PREPA, if that's okay.

THE COURT: Yes. Oh, do you have anything to say about relief to the people who are in the camps? Are they getting -- is there some sort of shelter? Are they getting food and sanitary supplies? I'd heard in the beginning that there was a real concern about people camping in places that don't have proper sanitary facilities and a risk of disease.

MR. MARINI BIAGGI: Sure. I can speak high level, and I'd be happy to provide more detail as well in our reports.

There are camps run by PREPA -- I'm sorry, by FEMA and by the National Guard. Our understanding is that they are fully serviced. Supplies are reaching the south. And I can provide more detail if Your Honor wants, but my understanding is that they are fully serviced either camps provided by FEMA or by the National Guard. National Guard --

THE COURT: Well, if you could provide any further detail you have in confirmation of this assurance --

MR. MARINI BIAGGI: Sure.

THE COURT: -- I'd be grateful.

MR. MARINI BIAGGI: I will.

THE COURT: Thank you.

MR. MARINI BIAGGI: As to PREPA, the Costa Sur power generation unit suffered damage to its infrastructure and damage assessments are ongoing. These damage assessments are divided in two tiers. First, PREPA is assessing visible damages to, for example, tanks, boilers, structures. A completion of that assessment is due within the next two to three weeks. Thereafter, PREPA will undertake a further assessment for nonvisible damages to infrastructure to better assess the cost of damages, insurance coverage, claims and determine any need to rebuild.

To address the generation affected through the Costa Sur Power Plant, PREPA is drafting an RFP to solicit up to 500 megawatts of emergency and new generation to help make up for the approximately 800 million -- megawatts currently lost from Costa Sur. The current goal is to have an RFP completed and issued during February.

As to HTA, as a result of the earthquakes, a few segments of roads have been closed, including a road closing at short segments of two major roads. The major road segments

closed include Highway 52 at kilometer 156 in Ponce, Highway 2 at kilometer 218 in Pinuelas, and Highway 2 at kilometer 153.9 in Mayaguez, all already reopened. Emergency repairs to reopen these segments were implemented using the Federal Highway Administration's ER funds, including an initial five million allocation of quick release from these funds.

HTA has estimated emergency repair costs of approximately 16.2 million and permanent repairs of 19 million. Of these amounts, about 12 million are estimated to require state funds, mostly for permanent repairs matching and engineering services. HTA has requested the Commonwealth to assign these funds not covered by the Federal Highway's ER program. Damage estimates are based on events to date, and as with other areas, they may continue to increase as assessments are done.

As to post hurricanes Maria and Irma efforts, since our last presentation, three new developments have occurred. The Oversight Board already addressed two, HUD's requirements to access additional funding and FEMA's flexibility on some areas to request funding for permanent projects. So I'll focus just on one additional new development.

In terms of additional funding since our last report, over 46 million -- 47 million has been obligated for about 145 new projects related to the recovery and reconstruction of Puerto Rico. These funds were obligated between December 10

and January 16th of this year.

These latest grants are obligated, among other areas, as follows: About 16.7 for debris and waste removal; about 14.3 million for repairs to roads and bridges; about 11.8 million for emergency protective measures; about 3.8 million for repairs to parks and recreational facilities; about 1.9 million for repairs to public utilities; and about 1.3 million for repairs to public buildings and equipment.

Before finishing this report, I would just like to inform the Court that AAFAF, COR3, FEMA and others continue working in conjunction with the Government of Puerto Rico to seek ways to optimize and improve the flow of funds and legal compliance with the Federal Government's requirements. PREPA, COR3, FEMA and AAFAF generally have weekly meetings attended by representatives of these entities to focus on permanent project formulation and funding, provide status and progress updates, and to deal with and manage the current damages relating to the earthquakes.

Unless Your Honor has any other questions, I will supplement the matters that Your Honor asked in writing and answer any questions that Your Honor may have.

THE COURT: Thank you, Mr. Marini.

MR. MARINI BIAGGI: Thank you, Your Honor.

THE COURT: Are there any other comments by way of status reports?

(No response.)

THE COURT: We'll move to the next Agenda item, which is II, the uncontested matters.

So I gather that the renewed Motion for Undisputed Payment is not going forward here, because there has been an order filed on presentment. And so now we will go to the Omnibus claim objection items.

MS. STAFFORD: Good morning again, Your Honor. Laura Stafford of Proskauer Rose.

THE COURT: Good morning again.

MS. STAFFORD: I will begin with the 76th Omnibus Objection to Claims. This objection seeks to disallow proofs of claim that assert, in part, bonds that are duplicative of a master proof of claim and/or amounts for which HTA is not liable because the bonds the claimants purport to hold have already been refunded either through redemption or defeasance.

THE COURT: I need you to talk a little louder and a lot slower.

MS. STAFFORD: Yes. Thank you.

This objection was heard and granted at the last Omnibus hearing as to all but this one claim, which was filed by Cigna Health and Life Insurance Company, and that's claim number 19617. This claimant had reached out to us and asked for an adjournment in order to have more time to evaluate the objection and determine whether to file a response, which we

agreed to, which is why it's still on the Agenda.

In light of the fact that no objection was received, we would request that the Court grant the 76th Omnibus Objection as to Proof of Claim number 19617 as well.

THE COURT: The Board's request is granted. The 76th Omnibus Objection is sustained with respect to the Proof of Claim of Cigna Health and Life Insurance Company, which is number 19617, did you say?

MS. STAFFORD: That's correct, Your Honor.

THE COURT: And you'll submit a proposed form of order?

MS. STAFFORD: Correct, Your Honor.

THE COURT: And this relates to docket entry 8961 in case 17-3283?

MS. STAFFORD: That's correct, Your Honor.

THE COURT: Very well. So now we can move to Agenda Item II.3.

MS. STAFFORD: Correct. As to the next several uncontested items on the Agenda, which are Omnibus Objections 96 through, I believe on the Agenda it's 122 -- there was actually the 123rd Omnibus Objection that was also noticed for hearing today, but it was inadvertently left off of the Agenda. But as to each of these, 96 through 123, we received a number of responses, each of which were adjourned to the March 4th Omnibus hearing either by Order of the Court or by

notices of adjournment filed by the debtors last Wednesday and last Friday.

In the intervening period between last Friday and today, we've continued to receive responses on the docket, as well as mailing responses that were sent either to Prime Clerk, to the debtors, or to the UCC. As we did at the December hearing, we would like to adjourn the hearings as to those claimants who have submitted responses either on the docket or by mailing in the last few days until the March 4th hearing. And we would request that the Court grant the objections as to those claimants who have not submitted responses for each of these Omnibus Objections.

THE COURT: And so you're cueing up these motions on these Omnibus Objections as uncontested solely to the extent of claimants who have not responded at all, and you will provide proposed orders listing those specific claimants, with the implicit or explicit representation that these were noticed, it's been checked in all the technical respects --

MS. STAFFORD: Yes.

THE COURT: -- and there have not been responses.

MS. STAFFORD: That is correct, Your Honor.

THE COURT: On those terms, the motions are granted as to the Agenda items listed as II.3 to II.28, which covers the 96th through 122nd Omnibus Objections, and the docket numbers are listed in the Agenda.

And then also the 123rd Omnibus Objection, what is the docket entry number for that, Ms. Stafford?

MS. STAFFORD: It is 9576.

THE COURT: And so also as to docket entry 9576, the 123rd Omnibus Objection, and the debtor's directed to submit proposed orders listing the affected claims.

MS. STAFFORD: Thank you, Your Honor.

THE COURT: Thank you.

The next item on the Agenda is the status conference on the Cobra Acquisition Motion for Allowance and Payment of Administrative Expense Claims.

MR. VAN DERDYS: Good morning, Your Honor. Fernando Van Derdys for Cobra Acquisition.

Your Honor, in this matter, Mr. Thomas McLish, co-counsel from Akin Gump, was going to address the Court through teleconference means.

THE COURT: So Mr. McLish has requested to address by telephone?

MR. VAN DERDYS: Yes. Yes, Your Honor, by motion.

THE COURT: Oh, he's in New York.

MR. VAN DERDYS: Okay. He's in New York. Right.

THE COURT: Thank you.

MR. VAN DERDYS: We're ready to answer any question the Court may have.

THE COURT: All right. So should I -- Mr. McLish

will make a presentation and answer questions?

MR. VAN DERDYS: Yes, Your Honor.

THE COURT: Thank you very much.

Mr. McLish, good morning.

MR. MCLISH: Good morning, Your Honor. Tom McLish from Akin Gump Strauss Hauer & Feld on behalf of Cobra Acquisitions, LLC. I'm happy to answer the Court's questions.

Cobra's position, as we set forth in the filing that the parties made jointly pursuant to Your Honor's Order, is that it is not in the interests of justice to continue the stay of Cobra's claims in excess of 200 million dollars. Cobra's entitled to be paid contractually for that money, and it is prejudiced by having to wait further.

Regardless of the parties' differing views of the criminal proceeding and the FEMA analysis that is under way, we believe it's quite clear that significant progress could be made on discovery and otherwise toward resolution of Cobra's administrative claims while those matters proceed. We believe that neither the criminal proceeding nor the FEMA analysis are likely to have any significant or possibly any effect at all on Cobra's claims, but even if you agree with the -- with PREPA and the government parties that there is a possibility that those items may eventually have some impact on Cobra's claims, that doesn't justify staying the claims indefinitely. We should proceed now, make as much progress as

we can.

The Court does not have to decide now whether final resolution of Cobra's claims must await the final outcome of the criminal proceeding or the FEMA analysis. The goal should be -- in our view, respectfully, Your Honor, is to get our claims as fully litigated and resolved as possible so that when a plan is approved, we're not starting from scratch. It's -- the payment can be made and Cobra can begin to be made whole.

I would point out that the parties listed various factual issues that they think require discovery in their joint filing. You can read those and see that they do not overlap in any significant way with any of the issues that are part of the criminal proceeding. All those issues that the parties have listed are things that can be addressed without interfering with the criminal case and in no sense need to await the outcome of the criminal case before the parties should address them.

The suggestion has been made that perhaps witnesses will want to take the Fifth Amendment as a result of ongoing criminal proceedings, but we submit that that's conjecture. There's no actual evidence to believe that that's going to be the case.

Similarly, with the FEMA analysis that's going on, that is not going to resolve any of the issues that the

parties have listed as needed discovery. And the conduct of discovery into those issues is not going to interfere with the FEMA analysis. Again, the FEMA analysis, just like the indictment issue, is just something that PREPA is speculating may give them some new arguments as to why Cobra shouldn't be paid in full for the work that it indisputably completed to restore Puerto Rico's electrical grid.

So in our view, Your Honor, it is not only not in the interest of justice to continue the stay, it is manifestly unjust to do so in this situation where a company the size of Cobra is out in excess of 200 million dollars. And much of that money, Your Honor, is disputed, by which I mean -- and I'll give an example.

One of the issues in the -- that PREPA has raised is over the head count. So when Cobra would submit an invoice, say for -- hypothetically speaking here, for 50 workers on a given day, they worked on the lines and submitted an invoice to be paid for those 50 people. If there was some piece of paper in the file, in PREPA'S file, or someone reported there were 49 people, 49 Cobra workers on site that day, then PREPA would reject the entire invoice.

So in those instances, Cobra has been paid nothing, even though, in that example, it's agreed that Cobra had at least 49 workers on site that day. Cobra paid those people, is out that money, but has been paid zero because there's a

dispute over one or two or however many employees were in dispute.

So the -- vast sums are owed to Cobra, and Cobra's entitled to be paid and is prejudiced by not being paid. And it's, respectfully, not in the interest of justice to continue delay towards resolution of those issues. I'm happy to answer any of Your Honor's questions.

THE COURT: Thank you. I do have a primary question here, which is, as I read PREPA's part of the submission, PREPA is contending that an adverse outcome on the criminal case, or rejection of bills by FEMA, would eliminate liability for some significant portion, if not all of the outstanding liability. Are you questioning PREPA's risk assessment as to the likelihood of an adverse outcome, or do you read the contractual documents differently from PREPA?

MR. MCLISH: Both, I believe, Your Honor. We do read the contractual documents differently. The contractual documents are quite clear that PREPA owes COBRA the money, regardless of whether it is paid by FEMA -- whether PREPA is reimbursed by FEMA, unless there's something that Cobra did that prevented FEMA from reimbursing PREPA.

But here, we don't think there is any such thing, and PREPA hasn't raised anything that would qualify for that. But we also believe that there is no reason to think that the criminal case could result in an outcome based on what's been

alleged in the indictment where PREPA would be absolved of paying COBRA for any of the work that it's done.

We think the only real issue is how much is Cobra entitled to be paid, and it's certainly in the neighborhood of 200 million dollars, if not more.

THE COURT: Thank you. I will hear from PREPA at this point.

MR. MCLISH: Thank you, Your Honor.

MR. VAN DERDYS: Thank you.

MR. DAVIS: Good morning, Your Honor. Joseph Davis of Greenberg Traurig on behalf of PREPA.

THE COURT: Good morning.

MR. DAVIS: It is a pleasure to be back in your courtroom. I have been nominated by the government parties to speak this morning. Assisting me will be Attorney Hadassa Waxman from Proskauer, to the extent the Court has questions about the pending criminal proceedings and how that might have some impact on some of the issues here. Ms. Waxman is in New York, and her smiling face at some point will probably appear on the screen.

Your Honor, I'd like to address this in several parts, and actually, I'd like to start with the question you raised. Cobra has been paid in excess of a billion dollars, so this is not a contractor who's gone without payment. It has actually been paid in large part.

The pending criminal proceedings, as Your Honor is well aware, could have a material impact on the enforceability and the voidability of, in particular, the fourth and fifth amendments to the first Cobra contract and the entire second contract. The reason for that is there are not, surprisingly, certifications mandated under law signed by Cobra certifying that there was no illegal criminal activity in connection with obtaining a public contract.

So if, in fact, a guilty verdict were to be rendered against, in particular, Mr. Ellison, the former chief executive officer of Cobra during the time period in question, there is a distinct issue of this coming back to you as to whether the impact of that creates a voidable or void contractual amendment. These amendments are approximately, what, 900 million dollars -- well, excuse me, that -- 745 million dollars are the two contract amendments at issue under the first contract, and then the entire second contract would also be deemed void, which is where many of the disputed issues arise.

So the criminal proceedings are anything but extraneous or irrelevant. And frankly, I've never seen a situation like this before, but like much of what goes on in these restructuring proceedings, we're tackling issues we've never seen before.

All of us have had cases where an issue has popped up

or a certain party may have a related criminal proceeding pending. I've never seen it before where the plaintiff is the party who has this issue, and now we're going to have to deal with the discovery and legal consequences of that in the event that it should not go well for the plaintiff.

That gets to my second point. This is being posited to you as if it were a complaint. Everything we're talking about is in complaint speak. Even the proposed schedules that have been attached to the status report, Cobra's makes reference to the government parties, PREPA, within 24 hours serving an answer.

Typically an answer requires a complaint. And a complaint is required under Rule 7001 of the Bankruptcy Code, which is applicable here, in the event that the party is seeking to recover money or property of the debtor, or to obtain an injunction or other equitable relief, or to obtain a declaratory judgment relating to the above.

Now, I confess we have not put this in our papers up until now because I think all the parties are trying to come to grips with what this motion is, but I would put it to the Court that this motion is seeking property of the debtor to repay alleged obligations by way of injunctive relief, which is to say to force PREPA to make payment now in the absence of any statutory authority otherwise, which is the classic definition of equitable relief. And of course, it's seeking

declaratory relief that some of these contracts are not void and that PREPA is obligated to make payment immediately.

While I certainly understand Cobra's concerns about getting paid soon for the stated reasons that they have put in the status report, it doesn't change the fact that under the law, they don't get paid until exit. And they have to demonstrate that they're deserving of payment in the first place, that payment is obligated.

As we put forth in the status report, this is not a matter that can be dealt with on the papers in the absence of significant discovery and significant factual testimony. Any time you're dealing with a dispute over hundreds of invoices, by definition, you're now digging into the facts. Your hands are going to get dirty to dig through all of those details.

There are head count issues that amount to over 80 million dollars. And it's not as simple as some sort of a supporting declaration being sent to the Court saying, well, there's substantial compliance in the following 22 invoices and there's partial compliance under these ones. It's not going to work that way.

People are going to have to testify as to what happened, what the bonafides are of an invoice for which payment is seeking, whether appropriate support is there for payment, and whether PREPA is justified in not paying, or that PREPA is obligated to pay. This is a detailed analysis and

one that is --

THE COURT: So are you --

MR. DAVIS: -- going to put a burden on the parties, in particular PREPA right now, to even address these issues when it's not ripe for adjudication.

And I'm sorry. I don't mean to cut you off.

THE COURT: Just going to that detailed point for a minute, it's your representation that under these contracts, if, as Mr. McLish represents, it's undisputed there were 49 people there, they're not entitled to 49, 50 -- 98 percent of the money, with only the other two percent being in play?

Your representation would be that if the count is allegedly off by one, you don't have to pay anything until there is a granular examination of how many people were actually on site?

MR. DAVIS: Your Honor, I think that a granular head count examination is going to be necessary for the overwhelming majority of these invoices. The way these contracts are set up is there's a per diem, if you will, on the cost of every worker who is alleged to have performed certain duties on a given date. An analysis of the invoices is the first step in figuring out how many people were supposed to be there. Then you go to the inspection reports to find out whether it has been certified that those people were, in fact, there.

So if we're talking about the difference, this ends up being a fight over -- his example was 49 people were certified to have been there or confirmed to have been there and the invoice said 51 or 52. I can't imagine we're going to be burdening the Court for a long period of time --

THE COURT: I sure hope not.

MR. DAVIS: -- but my concern is the ones where you're going to see the opposite, where it says 62 people showed up and they only confirmed eight, or where an invoice for work performed on one line is identical to an invoice that was submitted for, performed on a different line.

THE COURT: Okay.

MR. DAVIS: That's the stuff I'm worried about, because I think that's going to be the meat of it. And this is just one of the subject areas. If this were the only one, that would be one thing. I mean, this is only one of the discrepancies, if you will. We gave you the laundry list of --

THE COURT: Yes.

MR. DAVIS: -- issues. I could repeat them, but I'm not sure --

THE COURT: You don't need to.

MR. DAVIS: -- it's worthwhile right now.

THE COURT: In the interest of time, let me ask you a couple of direct questions here.

MR. DAVIS: Certainly.

THE COURT: First, you gave us an overview of your theory on the potential impact of a conviction in the criminal case --

MR. DAVIS: Yes, Your Honor.

THE COURT: -- on the representation that's in the contract and liability under the contract. Is it your interpretation of the FEMA arrangements that if FEMA declines to pay something, then PREPA has no obligation to pay it?

MR. DAVIS: I think we need to see the basis of FEMA's determination before I can report that to you. There is a difference between what is FEMA compliant, if you will, and susceptible to reimbursement by FEMA and what a contract would say -- what a contract would obligate.

THE COURT: So it could be --

MR. DAVIS: I acknowledge that. It could be that there is a delta problem, if you want to think of it that way, between what FEMA would pay and what PREPA may be obligated to pay. This is one of the reasons why, under the law, payment isn't due until exit, because if it turns out PREPA has to go forth and raise enough money to pay off administrative obligations that are different from what the expectation was from FEMA, the parties need time to prepare that.

But there is, however, in the contract a provision that says if the failure of FEMA to obligate certain funds is

the sole responsibility of Cobra, then PREPA does not have to pay. So that's why I say you have to see what FEMA says before we can get to the level of detail that Your Honor is looking for, which is whether PREPA automatically has a financial obligation to pay under its contracts if FEMA is not reimbursing for certain proceeds.

THE COURT: Okay. So it's not a zero sum issue as to any refusal by FEMA means PREPA is off the hook. It's factually sensitive and sensitive to contract language?

MR. DAVIS: Yes, Your Honor.

THE COURT: So it's a possibility that has a range?

MR. DAVIS: Yes, Your Honor. And FEMA has been undergoing this analysis since roughly September, August, probably August, and it's due May 29.

THE COURT: And as to Mr. McLish's or Cobra's concern that we could get to a point where a PREPA plan is being confirmed and all of the Cobra issues are still in play, am I correct in understanding that in order to get confirmed, PREPA would have to be paying or otherwise satisfactorily providing for the contingency of having to pay these outstanding disputed amounts to Cobra to be able to get confirmed?

I realize that's a very sort of high level conceptual summary, but --

MR. DAVIS: It --

THE COURT: -- is there a scenario where you can get

confirmed and not have anything aside to pay these disputed --

MR. DAVIS: Your Honor, I need to defer to Mr. Bienenstock on that one, because that's a plan of arrangement issue and not a Cobra, if you will, issue.

THE COURT: Mr. Bienenstock, what kind of assurance can you give Mr. McLish that you're not going to take all the money away and leave his contested claim unaddressed?

MR. BIENENSTOCK: Your Honor, pursuant to Title III, which incorporates 1129 of the Bankruptcy Code, a plan can't be confirmed unless, among other things, all administrative -- all allowable administrative expenses are paid in full in cash, and usually it's either on the effective date or on the -- so many days after the claim is finally allowed and there is no further appeal necessary.

So as a matter of the confirmation statute and jurisprudence, we would have to show the Court that it's feasible that if and when Cobra's claim is allowed in the amount they say it will be allowed, that we would be able to pay it in cash, in full, under the terms of the plan. We would not have to show, for instance, that we have the money sitting there in some sort of escrow account, but we'd have to show Your Honor that it's feasible, which is basically commercially reasonable, that if and when their claim is allowed, we would be able to pay it in full, as we pay our other expenses and obligations under the Plan.

THE COURT: Thank you.

MR. BIENENSTOCK: Yes.

THE COURT: All right. So if you want to sum up, I'll hear anything further briefly that Mr. McLish wants to say. And then I think I know what I want to do.

MR. DAVIS: Okay. Quickly, Your Honor, as we have put forth in the status report, it would be the position of the government parties, particularly PREPA, that this be delayed at least until the June Omnibus, at which point we will know what FEMA has done with the FEMA analysis.

There's a higher likelihood that there may be some determination, verdict in the criminal matter. And the parties will be in a better position to understand what the plan process is going to be given the discussion we had earlier today and how the true timing is for purposes of getting PREPA out of the Title III proceedings.

THE COURT: Thank you.

MR. DAVIS: Thank you.

THE COURT: Mr. McLish, did you wish to say anything further?

I think we need to turn a microphone on in New York. Would you say testing, testing?

MR. MCLISH: Testing, testing.

THE COURT: Okay. You're on.

MR. MCLISH: Okay. Sorry about that. Yes, Your

Honor. Thank you.

On that last point, I -- FEMA estimated that it would complete its analysis that it was directed to do by the OIG by the end of May. There's no reason to think that -- well, I guess they predicted that, but it's easily conceivable that they will miss that day. Obviously FEMA has tons of things going on, including lately in Puerto Rico.

So there is no hard deadline for FEMA's analysis, and Cobra has no ability to control or influence when that happens. FEMA's not a party here. So we don't think it makes any sense to just stay things indefinitely waiting for FEMA to do something that it may or may not do.

Same thing with the indictment. It's important to remember that Cobra is not indicted. Cobra has not been charged with anything. Cobra is not a party to the criminal proceeding in any way and has no control over or influence on when the criminal proceeding might get resolved or how it might get resolved. So it's manifestly unfair, in our opinion, to allow this case to stagnate while things that we have no control over go on potentially indefinitely.

With respect to the argument about whether a criminal conviction could result in Cobra not being entitled to any money, as we've explained in our papers, the contracts address when rescission is appropriate in a criminal context. The first contract says that rescission -- PREPA can rescind the

contract if Cobra is convicted of one of a list of enumerated crimes. Well, Cobra hasn't been charged with any, so that's not a possibility.

Under the second contract, the similar clause doesn't call for rescission at all in the event of criminality. So we think the contract makes clear that Cobra is entitled to payment.

One other point I wanted to address. There was a discussion about, well, we have to dig through all these issues on head count, et cetera, and dig down into the facts about every invoice, but the contracts unsurprisingly say what Cobra has to do to get paid. And it has to prepare an invoice. It has to submit the invoice. It has to submit a certification with that invoice. It has prescribed language that says this is what we're owed. The contract says, unless there are specific reasons, PREPA has to pay that invoice.

Now, if PREPA wants to now come and say, well, we don't believe your certification anymore, or we think you submitted a certification that was wrong, or your invoice was wrong, they can make that as an affirmative claim and ask for the money back. But under the contract, Cobra is entitled to be paid.

Bottom line though, Your Honor, is to the extent there are these disputes, let's start resolving them. Let's get going on it. As was said, the plan, the ultimate

reorganization plan can't be approved until this claim is resolved. So why are we waiting? Let's get started. Let's do it.

If aspects of the criminal proceeding become problematic, we can come to the Court. If the prosecutors, which they haven't yet, if the prosecutors have a problem with the parties conducting discovery into these areas, I am sure they'll inform the Court. But there's simply no reason to continue to delay at this time.

Thank you, Your Honor.

THE COURT: Thank you. Thank you both.

Given that there is at least one conference and further developments in the criminal case to be expected in the near term, and there is a target date for a report from FEMA, and in light of what appear to be very substantial transaction costs to discovery in preparation for resolution of the factual disputes that might or might not be mitigated by results in the criminal case and the FEMA review, the current stay on this administrative expense claim is continued.

And I will put this on for a further status report at the June Omni, and require the parties to submit a joint status report in writing a week before the June Omni, and we'll see whether either of those other matters is moot and whether the parties have either gotten any closer together or

made clear their positions as to the extent to which FEMA decisions and results in the criminal case could affect the obligation of PREPA to pay the outstanding Cobra invoices. Thank you.

So that takes care of Agenda Item III.1. And the next Agenda item is the amended motion regarding alternative dispute resolution procedures. And I am inviting Judge Dein to join me on the bench for that. And this relates to docket entry 9718.

Good morning again, Ms. Stafford.

MS. STAFFORD: Good morning again, Your Honor. Laura Stafford of Proskauer Rose for the Financial Oversight and Management Board.

I'd like to initially reserve a couple of minutes for rebuttal after we hear from the objectors later.

THE COURT: Thank you.

MS. STAFFORD: So over the past several months, the debtors have engaged in productive conversations regarding these alternative dispute resolution procedures with a number of parties, including AAFAF; the UCC; Mr. Mudd, who is counsel for Salud Integral en la Montana, one of the objectors here; as well as the Administrative Office of the Courts.

Those conversations yielded the ADR framework we proposed in this motion where, first, debtors and claimants exchange offers to settle. Second, the parties participate in

evaluative mediation. And if neither of these processes result in any resolution of claims, claimants have three options where they may either liquidate their claim before the Commonwealth courts; proceed before the Title III Court; or upon their consent, liquidate claims using binding arbitration.

The proposed procedures incorporate not only the invaluable input we've received from AAFAF and the Administrative Office of the U.S. Courts, but also elements requested by both the UCC and SIM, the only two objectors to the motion.

The UCC has long advocated the use of binding arbitration to resolve unsecured claims, much like the ADR procedure that was utilized in Detroit. The debtors' proposed ADR procedure incorporated that suggestion by including binding arbitration, which offers an efficient and practical means for resolving general unsecured claims. The proposed ADR procedures also reflect Mr. Mudd's suggestion that Commonwealth judges assist in the resolution of these claims in that they encourage the use of the Commonwealth court system to liquidate unsecured claims.

We view that approach as particularly appropriate here, in light of the fact that the vast majority of the claims that may be referred to ADR arise out of litigations in Commonwealth courts. And we think the Commonwealth courts

are, of course, uniquely suited to resolving the issues that those claims might raise.

Before filing this motion, as I noted, we had a number of comments and edits to our proposal from the UCC, and we accepted the bulk of those suggestions which are reflected in the proposed procedures before the Court. Notwithstanding these efforts and the fact that both of the objecting parties are broadly supportive of the ADR motion, we do have a few limited objections that remain before the Court today.

There's three primary issues that are raised, and the first of those relates to the selection of claims to be included in the ADR process. We understand that the UCC wants as many claimants as possible to have the opportunity to consider a settlement offer from the debtor, and accordingly, they've suggested that any claimant be permitted to seek to participate in the first two phases of the procedure, which is the offer exchange and the evaluative mediation.

We understand the UCC wants this and we think it's a very laudable goal, but we think it's simply impractical. This process was designed for an expected volume of 10 to 15,000 claims. To make it available to virtually the entire claims registry, which consisted of well over a hundred thousand claims, would impose significant burdens on the debtors and on the Court, which, under the procedures, would select the mediators who would participate in that process.

More importantly, we don't think there is any real benefit to the changes that the UCC proposes because the debtors are always happy to engage in settlement discussions with willing claimants, but we think those discussions are more appropriately handled in the context of ordinary claims reconciliation processes. And there's no need for them to be involved in the formal ADR process in order to have those conversations.

The second objection -- the second major issue that the objections raise related to the evaluative mediation procedures. First, the same request, that Commonwealth court judges be utilized as mediators. The debtors very much appreciate both the generous offer of the Commonwealth court judges to serve in that role and Mr. Mudd's efforts to secure mediators.

However, as noted earlier, the procedures already are making ample use of the Commonwealth court's resources, and its expertise, by providing an avenue for claimants to resolve and liquidate their claims before those Commonwealth courts. And we think it's most appropriate for the Court, in its discretion, to select the mediators who will resolve these claims as the proposed procedures currently provide.

We would note that the UCC also requests that evaluative mediation procedures be modified to provide that the parties submit mediation statements, and we think that

prescription will prove to be unnecessary because of the amount of information that we anticipate will be exchanged during the offer and exchange process.

We anticipate that all the information that would be needed to evaluate a claim would be exchanged during that process. And we think that in light of that, requiring the parties to additionally provide mediation statements is likely to be burdensome without a real additional benefit.

THE COURT: May I just say something about that?

MS. STAFFORD: Yes.

THE COURT: And in the interest of efficiency, I know I tend to front issues --

MS. STAFFORD: Yes.

THE COURT: -- and my intentions. Judge Dein and I both feel that having a mediation statement from each side of no more than, I think we're targeting it at seven pages, double spaced, will be very helpful to the mediator, because otherwise the mediator is going to have to marshal and find a road map through correspondence and submissions.

And so for each side to be able to bottom line its view of the issues, and if it's a confidential mediation statement, its parameters is something that can help make the evaluator's work much more efficient. So frankly, it's my intention to add that to the process.

MS. STAFFORD: Understood, Your Honor. And we

appreciate that. If it's helpful, then we're happy to include it.

THE COURT: Thank you.

MS. STAFFORD: The last set of objections are related to binding arbitration. The first of those objections relates to the requirement that claimants who elect to participate in binding arbitration pay 50 percent of the cost for that arbitration.

It's our strong view that modification of this provision is not warranted for at least two reasons. Most importantly, no claimant is obligated to participate in binding arbitration. It's entirely optional.

If they do not wish to or cannot afford to pay for binding arbitration at the rates that will be determined once we have selected an ADR provider, they have two other paths available for them to resolve their claim, either at the Commonwealth courts or before the Title III Court. And in each instance, they would be expected to shoulder the burden of their own expenses to present their case in those two forums. Claimants' due process rights are, therefore, not impacted by the requirement of cost sharing.

Requiring parties to share in the cost of binding arbitration is also consistent with procedures that have been followed by other large municipal debtors, including the City of Detroit, and there's no reason to treat the debtors here

any differently by asking them to shoulder more of the cost than was asked of other municipal debtors.

And given the sheer volume of claims that have been filed against the debtors, and the number that may ultimately proceed through arbitration, forcing them to shoulder either the entire burden or even a significant share of the burden could render the cost of arbitration prohibitively expensive for the debtors.

The remaining two objections that the UCC raised are with respect to binding arbitration, are both easily disposed of. The first, because it's facially improper. The UCC is asking the Court to provide that -- the Court to Order the debtors to participate in binding arbitration, even when they have expressly refused to consent to same. And that modification would violate due process, and we think it should be rejected.

And the third objection related to consultation rights regarding the selection of an ADR provider, which we've already included in our revised proposed procedures. So we don't think there is any further dispute between the parties on that. Unless the Court has any questions --

THE COURT: Just one moment. This is fronting an administrative concern that we have.

Your Section One in the procedures, when it speaks of transferring claims in, is unclear to us as to whether you

just plan to file, say, a hundred ADR notices with your initial offer in them on the docket and walk away from that, and later give some status reports that may or may not map back to that, or whether at the time you are initiating this, you will file a notice saying you are initiating this with a table that marshals core information about the claimants.

You can probably guess from my tone of voice which one I would prefer. And we have some thoughts about data points that we'd like included in that table because, of course, once they get to the evaluative mediation, we're going to need to be able to track. And we also want to have the ability to see what's in the pipeline and see what trends are as the status reports come in as to the things that are being resolved and not.

MS. STAFFORD: Completely understood. And happily, the second option was the one we had in mind, and it sounds like that's the one that the Court would like.

So we had in mind to provide a notice on the docket that was a table of claims that we intend to send in to the ADR procedures. We're happy to take any instruction from the Court as to what should be included in that notice.

And then the notice that we will send to claimants is the one that was attached to the motion, and that would include the specifics of the offer that was being made to them.

THE COURT: Very good. And can I also assume that you don't intend to take things that are currently in claim objection response mode and put them into the ADR process before this hundred day initial period?

We are counting on some time to be able to build our machine and develop operational principles and staff it before things start coming through the pipeline. So will the hundred day mark be the mark for the first time anything is designated to go into --

MS. STAFFORD: We're happy to proceed that way. And we do have a handful of claims that we've identified as potentially suitable for these procedures that came up in the December and the January Omnibus Objections, but we're happy to adjourn their hearings for a sufficient period of time so that we're able to meet the 100-day requirement and not overburden the Court by sending things in before things are ready, if that makes sense.

THE COURT: That would be helpful to us.

MS. STAFFORD: That's great.

THE COURT: And as to the number of 10 to 15,000, are these claims that have already been filtered through Omnibus objections, or do you expect to try to filter them out further through Omnibus objections before cueing them up for ADR, or are these -- is this a hard number that you expect to take into ADR?

MS. STAFFORD: I think that is a hard number that we expect to take into ADR. Those are, for the most part, ones that have not been Omnibus objections and instead have provided enough information to suggest that they are suitable for these procedures at this moment.

THE COURT: And as you can imagine, we keep trying to figure out what's going to come in. So we ask you questions and you say "I don't know yet", and so --

MS. STAFFORD: Right.

THE COURT: But here's another question, trying to get a hint here: Are you selecting these things, these claims, having in mind that the plan that has been proposed now -- and typically a plan would have a convenience class, so that we might be able to expect that claims that would fall into a convenience class would not be the sort that would be coming through this process?

MS. STAFFORD: We've had conversations about whether it makes -- whether that convenience class may affect the body of claims -- the convenience class in the currently proposed plan may affect the body of claims that would go into ADR, but I don't think we have clarity on that yet.

THE COURT: Thank you for your candor about the lack of clarity on that at this point.

Also, on the initial offer and counter offer in the first phase of it, you have deadlines for the first exchange,

but after that, no particular deadlines. And so we were wondering whether it would be helpful to you and to the claimants to have some more deadlines built in so that people are not waiting forever to hear.

MS. STAFFORD: Understood. And I think that does make sense. I may want to confer with our other claims reconciliation -- or other folks involved in claims reconciliation to figure out what exactly those should be, but I think it makes sense to include something like that.

THE COURT: And I'll come back to this when I have heard everybody and give you my editorial shopping list, but as a head's up, I think there's also missing from our operational perspective some clear marker for the termination of the offer exchange procedure and initiation of the evaluation phase. And so you might want to think about some certification that gives us a clue that it's about to come across our doorstep.

MS. STAFFORD: We would be happy to make sure that we have some notice to make sure that you are ready for them when they come in.

THE COURT: Okay. Great. That is it for my questions at this point.

Oh, I'm sorry. One more. The current procedures seem to indicate that if a claimant -- say that a claimant is only supposed to pick Commonwealth adjudication or

arbitration, if they're not opting to go to Title III litigation, but if they happen to tick off both boxes, the default result will be going into arbitration, which is the higher up-front cost option.

And so, one, is that really what you intend, and can you give me a little insight as to why? And two, if it is what you intend, the paperwork will need to be really clear to the claimants that that will happen.

MS. STAFFORD: That was our intention, to have claimants be automatically shunted into binding arbitration, to the extent they had selected that they were -- selected both, because we believed that we had an indication that they had, in fact, consented to binding arbitration.

If the Court would prefer that the default go the other way, I don't think we have a strong view on that.

THE COURT: Well, my preference is that there be clarity. And to the extent it would be useful to you all to rethink what that looks like, I invite you to do that. But it should be clear that, to somebody who checks both boxes, that the next voice they hear will be from the arbitration process and it will have a bill for half the invoice with it.

MS. STAFFORD: Okay. Understood, Your Honor.

THE COURT: Okay. Thank you.

MS. STAFFORD: Thank you.

THE COURT: Who's next?

Mr. Despins. I'm sorry. You didn't have any more --

MR. DESPINS: I can see Mr. Mudd is hiding in the back of the courtroom.

THE COURT: He's not hiding. He's waiting from the back row, but he's graciously letting you go first.

MR. DESPINS: Yes. I appreciate that very much, Your Honor. For the record, Luc Despins with Paul Hastings for the Committee.

Very briefly, because I know you've read the objections, these are proposed improvements. And the first one is allowing more people into this exchange of information, evaluation process. We set -- we knew that there would be a flood gate argument there, so we said, as a fallback, could we at least provide that the people who have litigation pending are automatically allowed to participate in just that aspect of the ADR?

And the reason we're raising these issues, Your Honor, is we're not riding on a clean slate here. There has been a history of delayed payment and delayed determination of claims. We know -- I know personally of stories involving more than ten years of such, you know, horror stories. And, therefore, this is not the run-of-the-mill case.

And I think that this type of thing, this type of suggestion allows people to feel that they will be included in the process, even though there are no guarantees they will be

successful. So that's our proposed improvement number one, which is fine. If we can't have everyone, because we don't want -- I understand the point, we don't want the trillion dollar claim to go into that kind of process. I will use that as an example. Or claims that have really no basis whatsoever.

But the people who have litigation claims already pending, it doesn't mean that they are necessarily meritorious, but they have invested enough to start that, or to have that. So, therefore, we would say that there should be that small modification.

The next one on arbitration, I want to be clear, we are not asking for the Court today to put a provision in saying that anyone who raises their hand will get arbitration. We want Your Honor to have the discretion to entertain such request in the future, both as to cost and as to arbitration, if -- in your discretion.

So I don't see how that could be wrong, because there may be cases where you look at this and say, my God, these people are entitled, or it may be one claimant, it may be ten claimants, you may not grant that request at all, ever. But why close that door today? Because there may be compelling circumstances where you believe the arbitration is -- is appropriate under the circumstance of that claimant.

Now --

THE COURT: Under PROMESA, how would I have the power to make a debtor pay a penny more than the debtor declares itself willing to pay toward arbitration, or force the debtor to arbitrate?

MR. DESPINS: That's called the power of the pen, meaning that you have the ability to say you want this type of procedure, I've considered all this, and I will condition my approval on you agreeing to those provisions. And again, I want to be very clear, you would not be declaring today that everyone gets in, but you reserve the discretion to order that.

And again, we believe that that may be very useful. And it's hard to discuss this in the abstract, because you don't know what compelling case could be -- and I'm sure that, you know, you'll exercise discretion and that not everyone will go through that.

And you may say, I'm not shifting the cost at all. And by the way, today you could decide, I hear your two proposals; I'm rejecting the cost shifting one, but I will consider future requests for arbitration. They're not tied together necessarily. So if you think that there's a real problem with the shifting of the cost issue, I think you still should say, I want to reserve discretion to allow some people to go to arbitration, even though the debtor doesn't agree.

And it's not a due process issue in the sense that the debtor is seeking modification of the normal rules to allow this process to go forward. We believe they're beneficial because we don't want Your Honor to be dealing with claims like this on a daily basis. We get that. But there's nothing wrong with saying, okay, I want to reserve discretion for that.

That's really our request, Your Honor. Thank you very much.

THE COURT: Thank you.

Mr. Mudd.

MR. MUDD: Thank you, Your Honor. John Mudd for Salud Integral en la Montana. I was not hiding in the back. It's just that my father once told me, stay near a door just in case you have to run, so --

THE COURT: I will always try not to give you occasion to feel you need to flee.

MR. MUDD: I was thinking, Your Honor, mostly with the tremors we've been having. Unfortunately, sometimes they are very scary.

So I wanted Your Honor to deal with this from a practical point of view. From what the Board tells us, there is a group of cases, which I don't think they get to a thousand, which have not been filed. They're not in court, federal court or the state court. And there's a group, the

majority of them, which are in court. Most of them, of course, in state court, but not all of them are in state court. Okay.

So we have an offer from the Government of Puerto Rico, the court systems, in which they have mediation. They call it mediation in Spanish. That's why I'm using the word, although we're talking about alternate dispute resolution. And they can deal with those cases, there's an office for that, which have not been filed.

As to the court cases that have been filed, it seems to me that it makes more sense to have the Court, the judges, start dealing with it from the minute of the mediation, you know, the exchange, et cetera. I'll explain why.

You have -- you can appoint somebody else, but we're talking about 10 to 15,000 cases. And who are the "somebody else's"? Who's going to pay them? That's number one.

Number two, they make an evaluation of the case, good or bad. The parties decide no, we're going to go to court. We're going to try this case. Then you go to the judge, and the judge in state court -- and I'm the only one here who's arguing this who goes to state court -- they take the pretrial and they write right next to it, settlement conference. All cases that I remember in my 37 years as a lawyer, state court wants to settle cases.

And then you have the mediator, whoever it was, in

good faith made a number. And then a judge has an awkward moment. He may not agree or disagree with that. That creates problems. It seems to me more logical, and cheaper, to have the state court, where there is a case file, dealing with it from the beginning.

Also, Your Honor, the evaluation of a case depends on liability and damages. How probable is it that you're going to win the case, basically?

And that is something that the Judge -- because, for example, I have four cases that are stayed. One of them was dismissed, so it was in the process of appeal. Another one, summary judgments had been filed. Another one was starting out. And another one is also on appeal.

So there are different instances in which the judge who has the case knows what's going on, knows if there is summary judgment, knows if there was a trial starting, because some of them may have had that. And it makes more sense for him to start from the beginning instead of having the mediator and then going to state court.

Also, little footnote, there are cases that are in federal court. It makes no sense to send them to state court. Federal courts have their flagging -- obligation to, when the case is filed and jurisdiction is properly invoked, to see the case. So those cases, if -- the few that exist, I have three of them, would have to go to the magistrate, which makes more

sense. And they would be able to deal with the case from the beginning again, instead of having to go to the mediator and then to the trial.

And finally, only one other point, Your Honor, arbitration. As long as it's voluntary arbitration, I have no problem with that, or our client has no problem with that. So if the Court has any questions --

THE COURT: No. Thank you.

MR. MUDD: Okay.

THE COURT: Ms. Stafford.

MS. STAFFORD: Good morning, Your Honor.

I just wanted to quickly respond to a couple of the points that were made by the UCC and by Mr. Mudd. With respect to Mr. Despins' point about the litigation claims potentially being permitted to participate in at least the first two pieces of ADR, unfortunately, the number of litigation claims is the vast majority of the ones that we currently anticipate sending through ADR. It's roughly 10 or 11,000.

So I don't know that there's any kind of floodgate issue. And we do intend to send almost all of those through ADR, so I don't know that it solves the floodgate issue that he's mentioning to take the modification that Mr. Despins had proposed.

With respect to the arbitration piece, as I

understood what Mr. Despins was asking for, it was exactly what we had already mentioned was -- would be a violation of due process, which would be to obligate the debtors to participate in arbitration, even when they have expressly not consented to it.

And with respect to Mr. Mudd's point regarding the mediation and the potential use of Commonwealth Court judges, we do continue to believe that it makes more sense for the mediators to be separate from the Commonwealth Court judges. And I think our current procedures already suggest that there be a separation between those magistrate judges who are used as mediators and those magistrate judges who may participate in the resolution of a claim later on.

We think that just makes more sense and preserves the Judge's ability to both mediate and resolve a case in good order. And so we think it still makes sense that the Commonwealth court system be reserved for resolving those types of claims that -- for claimants who elect to participate in that portion of the system.

THE COURT: And so, for clarity, where the current procedures say that an evaluating mediator can't get a reference, you mean in the particular case that that magistrate judge may have evaluated, not that a magistrate judge who happens to be among the ranks of the evaluating mediators --

MS. STAFFORD: Correct.

THE COURT: -- can't be in the Title III adjudicative pool at all? Because that would make life very complicated.

MS. STAFFORD: I don't want to make your life that much more complicated, Your Honor. Thank you. That is what we mean. That if you mediate one claim, you should also have it --

THE COURT: Thank you for clarifying that.

MS. STAFFORD: Thank you, Your Honor.

THE COURT: Okay. I'm sorry. Judge Dein, did you want to --

Okay. Before I formally make my decision, we jointly encourage you to continue to consider whether you need to put convenience class claims through this process.

MS. STAFFORD: Understood, Your Honor. Thank you.

THE COURT: Thank you.

All right. So Judge Dein and I have reviewed carefully the amended ADR Motion, which is docket entry number 9718, and have carefully reviewed it and considered the responsive submissions of the Unsecured Creditors Committee, of SIM, and the Board's reply papers. And I think we all know what the background is, so I won't go over that. I've also considered carefully the remarks here in court today, and we know what the outstanding issues are that are in contention. So I will go straight to addressing those and the

revision -- further revision concerns that the Court has.

So as -- let's see. Just one moment. There's agreement as to consultation in the selection of the arbitration service provider, so I won't address that.

I will turn first then to the comments regarding enhancement of the record basis for the evaluative mediation aspect of the ADR process. And as I indicated before, the Court is persuaded that the submission of short mediation statements, in connection with the evaluative mediation stage, would likely prove useful, both to the parties and to the mediators. And so I request that the Oversight Board revise the procedures to permit, but not require, claimants to submit mediation statements of no more than seven pages in length, double-spaced.

And the Court will be developing operational procedures for the evaluative mediation phase that will include provisions for the transmission of such statements to the mediators, as well as addressing other operational and procedural issues. And we will share those appropriately once we have those developed.

SIM'S submission proffers that Mr. Mudd has elicited the generous offer of the Commonwealth Court's mediation system and sitting Commonwealth judges to serve as mediators, and the Court very much appreciates that offer. But at least for the first stages of implementation of this ADR program,

the Court has determined that using members of the federal judiciary as evaluative mediators will be efficient, and, frankly, preferable from the administrative point of view.

And I also note it has been discussed here that the litigation aspect of the proposal contemplates consensual lifting of the automatic stay to permit adjudication of claim amounts in Commonwealth courts. So the Commonwealth's judiciary will play an important role in the claims reconciliation process, whether or not its judges also ultimately serve in the mediation phase.

And I am assuming, and I hope the Board can confirm this, that once the stay is lifted and litigation is returned to the Commonwealth court, there is no -- nothing that would preclude the negotiation of a settlement in the context of that litigation phase.

Is that correct Ms. Stafford?

MS. STAFFORD: That's correct, Your Honor.

THE COURT: Ms. Stafford has said that's correct. So to the extent that Mr. Mudd has indicated that a Commonwealth judge presented with parties seeking to litigate something is going to focus on seeing whether it can be settled, there is nothing here that would impede that process, and it would be very much appreciated.

So I will now outline a number of additional modifications to the ADR procedures that we believe are

necessary. I've mentioned a couple of them. I'll go through them in order with reference to the proposed procedures and the Notice Form, which have been filed at docket entry number 10295-1.

First, in Section One, as we've discussed earlier, clarify that there will be a schedule filed of the affected claims. And in a few minutes, I will talk about the data points that I would like to see in that schedule and in the subsequent status reports.

And in Section 2(b), please make clear that no claim objection response will be put into ADR before the first hundred day tranche. Or if you just want to promise me you won't do it, I'll take that promise. But that will be my expectation.

In Section 2(d), which is the consent to binding arbitration, I'm assuming, but asking you to clarify, that consent to binding arbitration, once given, can't be subsequently withdrawn by either party. So if the debtor consents, the debtor can't say at the last minute, I'm not consenting anymore. So that could be made clearer in the document.

In Section 2(f), I'd ask that you make a clear mechanism for marking the termination of the offer exchange phase as we discussed earlier.

In Section 3(a), which deals with evaluative

mediation, please replace the reference to, "United States Magistrate Judge" with "Federal Judge," because we may be able to call more broadly on our federal judicial ranks for that phase than we can for the Title III adjudication phase.

In Section 3(c), the deadline for the mediator to provide an estimate -- I'm sorry. I'm hesitating here because I think I brought up here a copy that -- anyway, I had some notes and I think I remember what they were, so I'm going to incorporate them in my remarks.

We're concerned about the 21-day turnaround for the mediator's estimate. We're obviously going to try to get this done as quickly as possible, but we'll be using people who also have other caseloads. And so I think there might have been a discussion of 14 at some point. We'd like it to be 28, with a provision for the mediator to be able to extend by up to 14 days. And we will always try to stay on the short end of that range, but especially since we don't know what it's going to look like yet, we would like that additional room.

MS. STAFFORD: That makes sense, Your Honor.

THE COURT: Thank you. And I did mean to say that we really do appreciate the consultation with the Administrative Office, as well as with other interested parties, in developing these proposals.

Then to perhaps save a little time and keep parties focused, we'd suggest that in 3(d), the time to respond to the

mediator's estimate be actually shortened by a week to 21 days.

MS. STAFFORD: That sounds perfect to us.

THE COURT: And on the mechanism and period for termination of the evaluative mediation, again to make sure people can manage their calendars, I'd ask that the 50-day period be extended to 75 days.

MS. STAFFORD: Sure.

THE COURT: Then in 5(d), which is the arbitration provision, it seems to us that it's important that if anyone is going to have an objection to the qualification or independence of the proposed mediation service provider, there be a mechanism to -- I'm sorry -- arbitration service provider, there be a mechanism to front and deal with that.

So what I'd ask is that the section be modified to provide for the filing of an informative motion identifying the arbitration providers from which the proposals have been solicited, or at least the top two, whoever the finalists are, before deciding on a provider. And then that permits any party that objects to the independence or qualifications of the providers to file a written notice of that within 14 days, with a provision for a reply by the debtors within seven days. And then the Court will determine whether any further action on the objection is required.

MS. STAFFORD: Understood, Your Honor.

THE COURT: Section 5(e) deals with video conferencing in connection with the arbitration. I would just ask that you indicate how the costs of any necessary video conference services are to be allocated or dealt with, if that's not somehow completely bundled up in the arbitrator's fee.

MS. STAFFORD: Understood, Your Honor.

THE COURT: And 6(d), which is the modification of the stay for Commonwealth Court litigation, I'd just ask you to clarify whether the modifications contemplated by this section would be self-effectuating or whether they would be documented with the entry of an order by this Court.

I, of course, vote for the latter, as in what we do with the AAFAF negotiated stay relief that are filed in periodic bundles. I think that would make the record clearer and make the statutory compliance clearer.

MS. STAFFORD: That makes sense to us, Your Honor. We are happy to use a similar mechanism.

THE COURT: Thank you.

And in 6(d) where you say that there's no -- everybody bears their own cost for Commonwealth litigation unless local procedural rules dictate otherwise, I think you should also be referring to statutory fee shifting provisions there, because there may be some.

MS. STAFFORD: Understood, Your Honor.

THE COURT: Section D, this is the information to be included in the status report. I'm going to read out now the types of data points that we would want included, but I also plan after this conference to file a notice that gives an exemplar of what the headings would be in the table that I'd really like to see, which may help you.

MS. STAFFORD: That would be very helpful, Your Honor. Thank you.

THE COURT: So just so that everybody knows, we'd be asking for the Proof of Claim number, a code indicating the claim amount by reference to brackets. So there would be, you know, unspecified number, then a 1 to 10,000 dollar bracket, an 11 to 100,000 dollar bracket, and a couple of additional brackets, so that we can get a sense of what's being resolved and what's coming through.

Then some general characterization of the type of claim. So, for instance, business contract, personal injury, if it's one of the claims related to a Commonwealth law, the specific number of the law.

And then finally, if this is feasible for you, we'd really appreciate it, if the claim is relating to a pending litigation, an indication of the forum in which the action is currently pending and the case number, if it's something with a docket that we could look up publicly.

MS. STAFFORD: I believe that will be feasible in the

majority of cases, and we can indicate if, for whatever reason, we're not able to provide that.

THE COURT: You can put not available, if it's not available?

MS. STAFFORD: Yes.

THE COURT: And we'd also like to set up a system where at each omnibus hearing going forward from now, the Oversight Board provides an oral status report that, at a minimum, addresses the number and types of claims that have been and are anticipated to be transferred into the ADR procedures. And again, this will help us in making our staffing and structural decisions.

MS. STAFFORD: Understood, Your Honor.

THE COURT: In 7(e), there seems to be a little bit of ambiguity between 7(d) and 7(e) as to how inclusive the term "resolved claims" is. It's a little unclear whether that includes arbitration resolved claims or not. So that's just a little clean-up thing.

MS. STAFFORD: We'll clarify that.

THE COURT: Great. And a typo in Section 8(a), there's a reference to 4(B) that we think should be 4(a). You can look at that.

A little more substantively, in 8(d) where you recite the rules that will be applicable in litigation before the Title III Court, please add an indication that Title 28,

Section 636, and Federal Rule of Civil Procedure 72 will also apply in litigation before claims adjudication judges.

MS. STAFFORD: Certainly, Your Honor.

THE COURT: And then with the ADR notice, there are a couple of strong suggestions that I want to make to try to make it a little bit more accessible and contextualized for the recipient. So -- and we'll also include a blackline of the notice in the follow-up notice that I'm going to file. But what I'm suggesting is that on the second page of the notice, immediately after the blackout line text box, you insert a heading that says, "Why am I receiving this notice?"

Followed by language to the effect of, "You filed the claims referenced above in the debtors' Title III case. The debtor believes that the claim is invalid or overstated, in whole or in part, and is prepared to offer to agree with you to a lower stated claim amount instead of starting proceedings asking the Court to reduce or eliminate your claim."

And then your existing paragraph saying, "By this ADR notice, this is how we're doing it" would follow that, but I think that might be a somewhat more reader-friendly introduction.

MS. STAFFORD: That makes sense to us, Your Honor.

THE COURT: And then you -- let's see. When we characterize what's going to result from this, the notice at some points uses the term, "liquidation of a claim," and I

think we also need to have a distinction between what's going to result as, you know, the stated amount of a claim is how I'm thinking of it, as opposed to what a person will actually get.

And so if you could either consistently use "stated amount" for that, or define "liquidated" as "stated amount," that would be helpful.

And at the end of the paragraph that says, "settlement offer," the final sentence says, "The treatment of your claim will be determined by the Plan of Adjustment." I think an additional clause should be added that says, "It will likely -- the payment will likely be a small proportion of the agreed stated amount of your claim."

MS. STAFFORD: We can add that, Your Honor.

THE COURT: So that people again know what this process is really pointing toward.

MS. STAFFORD: Understood, Your Honor.

MR. DESPINS: Your Honor, I'm not sure on -- the amount to be the full amount. I don't understand why you said a small proportion of the claim.

THE COURT: Well, that's why I'm asking them to consider --

MR. DESPINS: Okay.

THE COURT: -- how they're dealing with convenience class, whether that's going to be put through this process or

not.

And so you can think about it, I don't want to overstate the warning, but if, for the bulk of these claims, they're going to be negotiating a big stated amount. And it's going to be run through, at the end of the day, through a formula that's going to produce what we call teeny tiny bankruptcy dollars. I --

MR. DESPINS: Your Honor --

THE COURT: I want people to be forewarned.

MS. STAFFORD: Right.

MR. DESPINS: Your Honor, that's the problem, is we don't know if it's going to be tiny bankruptcy dollars or not. That hasn't been decided yet. The Plan will decide that. It could be full dollars. That's not what they're proposing, but we haven't seen the end of that movie yet.

So that's why we're concerned about telling people -- if you're telling you're going to get tiny bankruptcy dollars when, in fact, we don't know what the answer to that is today.

THE COURT: Well, maybe call it a significant possibility that it will be a small -- a significant potential or something --

MS. STAFFORD: Right. At a minimum, I think we can make clear that there may be a distinction between the amount that's settled and the amount that's ultimately paid. And we

can finesse the language around that.

THE COURT: Yes. Be as clear, but as appropriate in that warning, but I think there needs to be something there.

MS. STAFFORD: Understood.

THE COURT: And that will also help people make their determinations as to whether to do this through a settlement process or, you know, fight over the difference between 50,000 and 60,000, or something like that.

MS. STAFFORD: Right.

THE COURT: Okay. So on the second page of the Notice, the last sentence of the paragraph that begins with, binding arbitration or Commonwealth Court litigation should include, in addition to the reference to the payment amount for the arbitrator's services, a statement that they'll also have to pay the fees of their own lawyer, if any, and any incidental costs that they incur.

MS. STAFFORD: Understood.

THE COURT: So that they don't think the arbitrator's fee is the only thing.

And then on page 15 -- sorry, the third page of the notice where it discusses Commonwealth Court litigation and says, the debtors will consent to liquidate your claim before the Commonwealth courts, if you've made -- given a definition of liquidation before, then that works. Otherwise, saying something like, "having the stated amount of your claim

determined by the Commonwealth Court," might make that paragraph a little bit more accessible in the instances where the term "liquidation" is used.

MS. STAFFORD: That makes sense, Your Honor.

THE COURT: Okay. So those are the line edits.

Just a couple of additional comments. Judge Dein and I would encourage you to make the first tranche of transfers similar claims in some way. If it's, you know, certain types of litigation, or accounts payable, or something, just that, again, will help us with foresight and planning and staffing, because the first tranche is going to be a little bit of a pilot program for the parties and for the Court.

We will also include in the Order a notation that these ADR procedures are exempted from Local Rule 83(j), which is the court-based ADR program. And that's just important so that the powers that be know what's going on here.

MS. STAFFORD: Understood.

THE COURT: And as I said, I'll post something on the docket.

So with respect to the rest of the requests, I find either unwarranted or unnecessary the further modifications requested by SIM and the Committee that I haven't yet addressed.

As to permitting all claimants or certain types of additional claimants to voluntarily bring themselves into the

offer exchange and mediation phases, I find that the benefit that might accrue from building that into the structure would be outweighed by burdens that allowing such participation would impose on the debtors, the Court and the mediators.

For example, the debtors would have to formulate, communicate and potentially negotiate settlement offers for claims that they might otherwise be seeking to expunge or that they believe require litigation modalities that are not contemplated by these procedures.

But Mr. Despins, I would invite you, if you know of -- you're going to have to see, first of all, what they start putting in, what cases they start putting in. But if it occurs to you at some point, or you know of certain litigants who are just dying to get some sort of offer or would like to engage in this process, please give the case numbers and the names to Ms. Stafford. And maybe they'll go in, or, as Ms. Stafford had said, the Board is open to informal negotiations.

So I'm not trying to shut anybody out. I'm just trying to have a closed capsule procedure of this sort to begin with.

And with respect to the cost-sharing objection and on the binding arbitration, I'm satisfied that these procedures offer claimants adequate alternative avenues for liquidating their claims, so that a provision permitting requests for

modification of the arbitration cost-sharing arrangements is not necessary.

And the Court can't require the debtors to submit to arbitration with respect to particular claims where the debtors have not consented. The Court legally can't make that direct request, and the Court determines not to use its indirect leverage of withholding approval of these procedures in order to make that a price of getting these procedures started.

And so are there any further comments, Judge Dein? You have to lean over.

HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: I'm sorry. You indicated that there were a handful that you thought might be ready to go into the process. Could you just describe what status those are at?

MS. STAFFORD: So there are a number that are -- that were part of the Omnibus Objections that we filed either in December or January, and the responses that we received provided us with a case number or other information that suggested they are ready to -- they are suitable for these procedures.

Others are ones through either accounts payable claims or litigation claims, with respect to which we've had some communications with the government officials and have an understanding of what an initial offer might be. And so we're

ready to send those through.

I don't know that there's a huge number at this point, but I know we are actively working to make sure we have as many as we can, as ready as we can, once we have the procedures Orders entered.

HONORABLE UNITED STATES MAGISTRATE JUDGE DEIN: All right. One of the things that you can think about, it seems to me, is if there are exemplar packages where you finish the exchange, so that we can at least think about the administrative parts of how to docket things and things like that, it might be worthy of discussion with the Administrative Office once you have a package together.

MS. STAFFORD: We'd be happy to do that. And I think we -- I'll let Jay Harriman, who is here in the courtroom, tell me if I'm wrong, but I think we have at least some that we can send over in short order.

THE COURT: Thank you. And so for all of these reasons, the Amended Motion is granted subject to the revisions that I have detailed. And I will file tomorrow, or at the latest by Friday, an exemplar of the template for the reporting, and also a black-lined version with the suggested language changes for the notice, unless you feel you've got a good enough handle on what I'm asking that I don't need to do that, because I've given you some options on how to deal with the liquidation nomenclature and that sort of thing.

MS. STAFFORD: I think it would be helpful if you were to provide us with the order just so we make sure there's no miscommunications. So --

THE COURT: We'll do that. And so then once that's on file, the Oversight Board is directed to file on presentment a proposed Order attaching a revised version of the ADR procedures and notice that incorporates the additional modifications.

And so we'll also give you the additional language about Local Civil Rule 83(j) for inclusion in the adopting order.

So thank you all for your collaboration, your patience with me and getting us to this phase. So speaking of phases, it's now five past 12:00. So we will take a lunch break now and resume at five past 1:00 to address the revenue bond related issues, starting with the PRIFA Motion to Amend the Lift Stay and going into the conference on the Interim Order. And then we'll finish up with the other one or two contested matters, I'm not sure which.

So thank you all. Have a good lunch. See you at five past 1:00.

(At 12:04 PM, recess taken.)

(At 1:14 PM, proceedings reconvened.)

THE COURT: Buenas tardes. Please be seated. I apologize for the delay in resumption.

So we are now at Item III -- sorry, III.3 of our Agenda, which is Ambac's Motion for Leave to Amend the PRIFA Lift Stay Motion.

Hello, Ms. Miller.

MS. MILLER: Good afternoon, Your Honor. For the record, Atara Miller for Milbank on behalf of Ambac.

Your Honor, Rule 15, which you indicated will govern this motion, provides as a general matter that leave to amend shall be freely granted. The Oversight Board and AAFAF apparently ignore the standard, citing it nowhere in their papers, and arguing instead for denial based on the fact that, and I'm going to quote them, "movants have not demonstrated why their proposed amendments would change the calculus." That's not the Rule 15 standard.

The Oversight Board and AAFAF rely on the limited exceptions to the broad right to amend based on futility and undue prejudice. So I want to start by talking about the proposed amendments and then addressing their specific arguments.

So the proposed amendments do four things. First, they address the intervening First Circuit precedent. And as I was reading over and preparing for today, I realize that one intervening First Circuit precedent which we failed to mention, maybe shockingly, was the *Ambac* decision from the First Circuit which --

THE COURT: I've looked at that.

MS. MILLER: Right. And I'm sure you know that many of the proposed amendments, in fact, the entire last section related to 305 comes directly out of the guidance and instruction that the First Circuit gave in that decision, which, frankly, I think was quite a different way of looking at how constitutional issues and claims should be addressed in the context of these Title III proceedings, as well as the First Circuit's decision in *Gracia-Gracia*.

Second, it joins the Trustee and makes changes requested by the Trustee that in their view were necessary to ensure that the broader interests of bondholders were reflected. And in that regard, it also joins the other monoline -- interested monolines.

And on that, I think it's -- I note it more because it consolidates arguments that had separately been raised in joinders, but it also, in our view, is sort of -- and this is going to be the fourth goal of the amendment, but it's an attempt and an effort to really streamline the cases.

And as the Interim Order assumes and expects, there will be coordination on the bondholder side. And so part of our attempt in the intervening time was to make sure that all of the bondholders and the Trustee were all on board with making the same arguments in advance and the same ideas.

The third set of amendments address and incorporate

new factual information that was revealed since the filing of the motion.

And fourth, as I mentioned, it was aligning the interests, both in terms of collaborating among the PRIFA bondholders, but also aligning the arguments in the presentation of the arguments to the other revenue bond-related stay motions, so that the Court could have sort of the comprehensive package and could more easily think about where the issues are squarely overlapping and what the differences are between the various issuances.

The Oversight Board complains that this resulted in a wholesale redrafting of the motion. We disagree with that. And with the exception of two new substantive arguments related to 305 and the trust res, which come directly out of the intervening First Circuit decisions, as well as the withdrawal of certain arguments, also as a result of the *Gracia* decision, everything else is a reorganization or reordering and amplification of already existing arguments.

But even if it were a wholesale rewrite, we believe that the amendments further this Court's goal that was imposed on the parties through the mediation process. It allows for a more complete and streamlined presentation of the revenue bond issues, and ensures that overlapping issues are presented to Your Honor in a coordinated fashion.

The Oversight Board notably does not object to the

Trustee's addition to the motion, but seeks to impose what we believe are unreasonable conditions to such joinder. Namely, they say that if you want the Trustee to be part of it, the Trustee should just file a simple joinder that says, we're in the party. That's not how it works. And the Trustee views itself as having its own duties and responsibilities, and the Trustee has the right to bring its own motion on behalf of bondholders.

And I suspect, given the holdings in this case, that if the Trustee were forced to do that, the motion that they filed would look a whole lot like the proposed amended motion here. So we're trying to cut through some of the inefficiencies by pulling it all together in a single, proposed amended motion.

So the Oversight Board focuses its argument on the limited futility exception in Rule 15, but as I said, the Oversight Board acknowledges that many of the proposed changes are appropriate and relevant. And that alone is sufficient to satisfy Rule 15.

Turning to futility, the Oversight Board's arguments on futility are -- and I thought a lot about how to characterize it, and if I were talking to my nine-year-old, I would characterize it as "because I say so," but in this Court, I'll say that it's what I would call the ultimate ipse dixit. In plain terms, the Oversight Board is asking this

Court to deny the Motion to Amend on their say so that the entire statutory scheme and all of the attendant property rights and transfers have been preempted.

This position, and I'm sure now that I've said it we'll hear from the other side that that is not core, but this position is so fundamental to their motion that they say it no fewer than 18 times in their opposition brief. Notably, that's an argument that even AAFAF won't join, and yet it somehow demonstrates how futile any of the proposed amendments would be.

These questions, including whether, in fact, the relevant statutes have been or even could be preempted in the manner suggested by the Oversight Board, and whether bondholders and the Trustee are a mere creditor of a creditor as against the Commonwealth, strike at the core of the underlying stay motions. They are the substantive issues that this Court is being asked to address on these motions. And frankly, we think that it is procedurally improper to tee them up and present them to the Court under the guise of a futility argument on proposed amendments.

We think that the briefing should more forward on those, and the Court should hear them on -- I don't even know if we're at the -- I think we're at like 30-hour notice to consider those issues. Not surprisingly, none of the futility cases that were cited by the Oversight Board come close to

suggesting that futility is evaluated based on whether the opposing party believes that their untested assertions have been rebutted or not. If that were the case, then the standard for whether leave to amend would be granted wouldn't be that it would be freely granted, but instead it would be whether the proposed amendments result in immediate capitulation by the opposing party.

The cases cited by the Oversight Board highlight how inappropriate their futility argument is, as framed here. In each of those cases, futility was being assessed after a ruling by the Court on the Complaint and was testing whether the amendments cured the deficiencies identified by the Court. That makes sense, right?

So once the Court defines the bar, a proposed amendment then gets measured against that bar, and if it doesn't clear the bar, then you can determine the proposed amendments are futile. But here the Oversight Board is urging Your Honor to assess the proposed amendments against the bar that they've unilaterally said applies, without giving Your Honor the opportunity to determine whether they're right or wrong. And they don't think it requires saying it, but I'll say it anyway. We disagree with where the Oversight Board purports to set the bar here.

The Oversight Board also argues that the motion should be denied because the proposed amendments go beyond the

scope of the February 27 hearing. And this issue, frankly, is less important for purposes of this motion, but carries over to the next one. And so I think there is an aspect of it that is clearly presented here that I think I have time to address, so I'm going to take two minutes on that.

So first, we disagree with the Oversight Board's characterization of the amendments in this regard, and in particular with *Gracia*, which clearly held that trust res held in a commingled account needs to be traced through the lowest intermediate balance test to make a prima facie showing for lift stay purposes.

So we would say in that case that our view of *Gracia* is plainly different than the Oversight Board's, but our read is that that aspect of the case actually spoke to what is the prima facie showing that you need to make to establish that you have a property interest in particular property. And that is within the scope no matter how you define the scope of the February 27 hearing.

But second, it would be inefficient to limit amendments, as the Oversight Board seems to be proposing, to only a core set of preliminary issues. Let's call it that. Whatever you want to call it, but some limited set. All that means is that the next time, you know, if we get past that, we are just going to be back before the Court arguing a motion to amend again.

If the Court's considering now whether an amendment is appropriate, there should be an amendment to the entire motion rather than having it piecemeal. I mean, ERS comes to mind in terms of thinking about, you know, how awkward procedurally things become when you move forward on a motion; changes want to be made; it goes up to the Circuit; it comes back down; changes are then made.

You know, there are motions whether -- can we allow it; can we not; how do we define what the record is. We're here now, and all of the amendments should come in.

But most fundamentally, we continue to object to any proposed bifurcation of the Stay Motion to separate out standing and secured status from any of the other issues. Our position is that there's no authority for such bifurcation under 362(e).

And frankly, we read Your Honor's -- and I'm sure you'll tell us if we're wrong, but we read Your Honor's December 19th Order as superseding the June 23rd PRIFA Order in this regard, providing for supplemental briefing on standing, secured status and any other issue relevant to a preliminary hearing.

And so we read that Order as saying we're not hearing until the June 23rd scope secured status, but we're going to put PRIFA in the same preliminary hearing sort of box that CCDA and HTA are in.

THE COURT: I included in that box "secured status and standing." So I'm not --

MS. MILLER: Right. So to me --

THE COURT: -- sure what point it is you're making here about my having backed off the notion that fronting of those issues is appropriate.

MS. MILLER: Well, I don't think that there is a basis to say if there is a stay motion, that some issues get teed up on day one and the rest gets teed up on -- at some later date that we haven't consented to. I think, under the statutes, there's authority at least to say that a preliminary hearing can be set, and then you can have a final hearing within -- you know, as long as the final hearing is within a reasonable time, absent exigent circumstances being demonstrated.

THE COURT: The statute requires me to find compelling circumstances to have anything other than a final hearing the first time, but I don't read it to have such limited circumstances it is impossible for me to decide that dealing with certain gating issues before dealing with the full scope of evidentiary issues, some of which could conceivably be mooted by the way, the gating issues, are precluded by 362(e).

MS. MILLER: So our position is that it is precluded, and I understand that at least in the June hearing you held

that you were going to proceed only on scope and secured status. We read the December Order as expanding the scope of what was to be presented at the February -- now February 27 hearing.

And, frankly, I'll put our view also on the record that we don't think that an intermediate preliminary hearing at this point is appropriate. We think we should just go to final hearing. And I don't know what process is being served or what exigent circumstances warrant not just moving to a final hearing.

So I understand you may view that differently, but that's certainly --

THE COURT: And I hear you.

MS. MILLER: So that's our position.

And then I just want to take my last minute to address prejudice. So the Oversight Board also argues for denial of the motion based on prejudice, essentially arguing that the amendment would require them to do more work. That's always true with post briefing amendments and is not itself a basis for denial.

And I would also say that the argument smacks of disingenuousness. You know, after 22 pages of arguing how absolutely irrelevant and futile all of the proposed changes are, it's hard to take seriously the suggestion that they're going to be so prejudiced by the additional briefing that they

don't even think they need because nothing changes anything in the calculus.

I'm not suggesting that they're not entitled to supplemental briefing, but I would also note that Your Honor's Order, in terms of timing, which they complain about, set tomorrow as the deadline for that, but also provided, unless the Court Ordered otherwise or unless the parties so stipulated. And they never even so much as asked us to extend that, which I'm sure, had we gotten the request, we would have entertained.

So just the last point on prejudice, they argue that these gating issues would delay the resolution -- sorry, that delay in the resolution of these issues is prejudicial to formulation of the Commonwealth's Plan. So on that, I would note first, the Commonwealth has already formulated and filed a plan, so I'm not sure what that's a reference to.

And while we agree that these are gating issues that have to be decided before any disclosure statement could be approved, and certainly before Plan confirmation, right now they're set for hearing on February 27, which is before the hearing is even going to be set on the mediator's proposed schedule on a plan and confirmation. So with that, unless Your Honor has questions --

THE COURT: Just one. So you're telling me that you read my December 27 Interim Revenue Bond Order to set the

February 27 hearing as one on the full scope of factual and legal issues relevant to the Lift Stay Motions, plus the question of whether focus on those issues should be delayed and joined up schedule wise with the dispositive motion practice on the adversaries? I'm still trying to understand --

MS. MILLER: No, I didn't -- in terms of the scheduling piece of it --

THE COURT: Well, you said two things that I didn't quite follow, just to be honest, and I'm sure it's me and not you.

MS. MILLER: Could be me.

THE COURT: But you said that you read the Interim Revenue Bond Order to supersede and somehow expand the allowable scope of whatever a first stage PRIFA hearing is going to be. And then just now, in closing, you said something to the effect of now February 27th is cued up as the final hearing on everything in the Lift Stay Motions. And that was news to me.

MS. MILLER: Oh, no. That's not what I intended at the end. That -- no, I do not see that as -- I don't see February 27th as a final hearing as currently set, although we would suggest that either February 27 or some date shortly thereafter, if the parties need more time, should be set as the final hearing.

But we view that as the preliminary hearing, which we think potentially would give -- if what the debtors need is guidance from this Court on -- that they can use in formulating a plan, because we would agree with them that their current plan is patently unconfirmable, and so it will be revised.

And so if that's what they need, I suspect they may get that at the preliminary hearing, which is currently set for February 27. So in terms of timing --

THE COURT: Right.

MS. MILLER: -- there's plenty of time to have this, whether it's in a preliminary and final hearing construct, or, as we would advocate, just in a final hearing construct, to have that issue teed up and heard long before we get to any disclosure statement, the schedule for which isn't even going to be out until -- or isn't even going to be argued before Your Honor until March.

THE COURT: Yes. Thank you.

MS. MILLER: Thank you.

THE COURT: Mr. Bienenstock.

MR. BIENENSTOCK: Thank you, Your Honor. Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board as Title III representative of the Commonwealth.

Your Honor, I'm going to go to the end of Ambac's Reply Brief to start off with a few points as to why we think

the motion should be denied. But I realized, as I said that, that I should first advise the Court basically where we're coming from on this.

The Court's June 13 Order, as followed up by, I guess, the December Order, which sets up the February 27 hearing, most specifically identifies standing and secured status as issues that the Court wants heard on those dates. To us, that is critical, because depending on how it's resolved, there's certainly a possibility, if the Court finds lack of standing or no secured status or other property interest that is entitled to adequate protection, then all of the discovery and everything else that would be involved in a final stay hearing would be unnecessary.

And I would think that was probably at least one of the considerations that caused the Court to identify those issues at its June 13, 2019, Order and to follow through on them. And the rationale for doing it then -- is as good then as it is now and vice versa. And that's our main were concern, whether or not the Court ends up allowing the amendment.

As far as prejudice --

THE COURT: Well, let me ask you this: You asked me late Friday night for a page extension on each of the Lift Stay Motions, which I gather includes the PRIFA related one, of 65 pages to address all of the issues that have been

raised. And so if I grant this motion today, are you filing your opposition tomorrow, and is it going to address these amendments in the 65 pages that I gave you? What are you planning to do?

MR. BIENENSTOCK: Well, absent the Court telling me that we have a few more days for the Amended Complaint, yes, of course we are going to comply with the Court's Order and file our responses to the HTA Stay Motion, the PRIFA Stay Motion that's really -- well, they're all against the Commonwealth, and the Stay Motion that relates to CCDA and the Tourism Company.

It hasn't been easy, and a few extra days would be appreciated. But we're going to comply. And in terms of the content of our response to the -- Ambac's PRIFA Stay Motion at the Commonwealth level, the bulk, the vast bulk of the response goes to the issues of property interest and standing. We also cover the issues the Court identified in the December Order.

At the end, we explain why things we've said previously in the brief establish compelling circumstances, if necessary, for the Court to have as long as it wants for the final hearing, but primarily, the briefs cover secured status. And by any measure, the bulk of the pages is all the reasons why they don't have a property interest to protect.

Their lien -- you know, in the PRIFA situation, their

security interest comes from PRIFA taking money and putting it into a sinking fund for them. And the whole motion is about how to get the Court to somehow say that the Commonwealth either doesn't have a property interest in their revenues it collects and is supposed to appropriate to PRIFA, or if it does, it's already given it to PRIFA, so it doesn't have it anymore.

I mean, they came up with a lot of theories that we conceive of as Hail Mary passes, which is understandable because the money they were counting on isn't down at PRIFA. But it's all about property interest.

THE COURT: You don't seriously expect me to reject all of their arguments regarding security interests on this Motion to Amend, given that I said we're under Rule 15 --

MR. BIENENSTOCK: No. No. Not on the Motion to Amend, no.

THE COURT: Okay.

MR. BIENENSTOCK: No. I was just explaining the content of our brief that we'd file tomorrow.

THE COURT: And while we're on the brief that you're filing tomorrow, and this gets a little bit into issues for the next conference, it seemed to me that on the Reply that was filed most recently, and I can't remember whether it was this one or the one regarding the conference, that you seem to have backed off the issue framed in the Revenue Bond Order of

seeking that I find there are compelling circumstances to join up this lift stay litigation with the Rule 12 motion practice and the adversaries, and instead, subject to bifurcation of lift stay -- I'm sorry, standing and security interest issues, are willing to engage in a lift stay oriented litigation process?

MR. BIENENSTOCK: Okay. Here's our thinking on this. And, Your Honor, I too am confusing which pleading contained which analysis, but they're all interwoven. As the First Circuit pointed out in the *Gracia* decision, which we think the Court already -- it was no profound new development. We think that the Court already took it into account when it said it wanted to hear about secured status. But what the First Circuit said is, at the preliminary hearing, the Court can at least look at the property interest on a preliminary basis.

And then in the *Grella* case that Ambac relies on, where it says it only has to make a colorable claim to a property interest, the First Circuit explains what it means by a colorable claim is that, in the context of a preliminary injunction hearing, when you find they have a likelihood of success, so more than 50 percent chance of success.

So here is our thinking on what -- the question Your Honor just asked. At the stay hearing, at the preliminary -- at the first hearing, let me not call it preliminary hearing, but at the first hearing, Your Honor has a lot of options.

Your Honor can say, I have all of the documents and laws applicable to the alleged property interest or security interest. I can make a final decision. If the Court does that, then there's no need in our adversary proceeding to do it under 12(b) or anything else. The decision is made. There's no security interest. There's no property interest.

But the Court, Your Honor, also has the option at the first stay hearing to say, I think it's going to -- it's going to come out this way, but I'm not making a final ruling. I want to have a subsequent -- a final hearing or a second hearing. Well, if the Court does that, then our adversary proceeding serves a purpose, because we can bring on a 12(b) or summary judgment motion and get a final ruling on the property interest.

Now, as I've signaled, I think, since it's all based on documents -- just what grants of security interest or property interest do the documents provide and the statutes provide? And they're not going to change. They're documents.

We think it's likely the Court can reach a final determination, but you never know. And so the adversary proceeding is really only there if the Court can't or doesn't get to a final determination of the property interest issue. The Court has a lot of options, therefore, for how it wants to proceed and track the Stay Motion, on the one hand, and the adversary proceeding on the other hand.

THE COURT: Thank you.

MR. BIENENSTOCK: And that's a discretion that Your Honor has that we, you know, can't take away. And as I said, we think you'd be able to decide it and want to decide it at the first hearing on the stay, but we may be wrong. And maybe the Court will see things or things will come up that will change that. I can't tell.

Okay. In terms of getting back to the amendment motion --

THE COURT: Why I should deny this amendment motion, since we agree that those core substantive issues are for later litigation on something other than this particular motion?

MR. BIENENSTOCK: Right. Right. So at the end of Ambac's reply in footnote eight, it says, oh, by the way, even if we waived the 30-day limit in 362(e) with our first motion, we're not waiving it in this amended motion.

Well, that's prejudice right there. I mean, we shouldn't have to give up the waiver that we already have. Frankly, neither the litigants nor the Court should have to give that away, if that's the price of letting them amend their motion. They've actually supplied a prejudice that we hadn't even known about until they filed their Reply.

The other prejudice, and it really goes to the futility as well, is that we don't agree with the way Ambac

today or in its Reply described our opposition. We're not -- not saying look at the merits and then figure out futility. What we're saying is on the gating issues of property interests, security interests, and standing, none of their amendments go to that.

Adding the Trustee, as we said, that can happen by joinder. They said, well, the Trustee gets to file their own brief, but they control the Trustee. So we think that's a false thing, that that's what requires a rewrite of a 60-page brief.

Then they want to drop one of their arguments. Obviously, that's fine. They don't need an amendment to do it.

Then they argue that they got in discovery from AAFAF wiring instructions. And our point is wiring instructions that one part of the government says, we're putting the money here and we want to send it over here has nothing to do with property interest. That's the mechanics of how they move their money around, doesn't affect whether they were granted a property interest, either as a security interest or an ownership interest. So that's our point of futility.

Nothing they're amending helps them on the gating issues Your Honor said would be decided in the June 13 Order. And at the least, we think the June 13 Order should be carried out. And if we lose it, then the Court can say, okay, you can

amend, for what it's worth, but it's unnecessary to do that now.

THE COURT: Well, as we see often in pleadings in civil litigation, and we've seen at stages in this case, there are pleadings seeking to frame positions as to issues that may or may not be mooted out by the decision of other issues, but to put the full set of claims or propositions to be asserted on the table to be dealt with as appropriate under the Rules of Procedure.

And so it seems that having gone through this exercise in which Ambac has offered something that it says is comprehensive of its theories, to say, well, no thank you now, but maybe you can do that again later, strikes me as terribly inefficient. So I guess I'm asking if you have anything to say to help me understand that a little bit better, to feel that I haven't wasted a whole lot of time reading a brief that you're telling me I should perhaps maybe read again in four months. Help me with that.

MR. BIENENSTOCK: Well, largely it goes back to the very first thing I said. Our first priority is to ask the Court to have a hearing on the gating issues, standing, and security interests and property interests.

Standing, I want to just point out is really a two-part or it has two -- there are two different standings involved when we say standing. One standing, which was

prominent initially, was whether they had standing to make a motion given the terms of their Trust Agreement that said that only the Trustee could sue on the bonds. And that would likely be cured by joining the Trustee.

And we -- frankly, that's why we don't object to the Trustee joining. We want them to have standing because we want the decision made.

But the second part of standing is if they identify a property interest of PRIFA -- I mean, their contention is PRIFA has a right to appropriations from the Commonwealth; that is PRIFA's right, not the bondholders' right. So that's a second issue as to whether a creditor of a creditor can have standing.

They have to pass both of those tests, but in the second standing test, the Court would end up determining the property issue. So that's good, whether the Court does it on a preliminary basis or a final basis.

And I was just saying that we think we've demonstrated, but they don't have grounds to amend. But if the Court was concerned that we might be wrong, it can still go ahead and hear the gating issues, whether the amendments are made now or later.

Now, I also want to mention, Your Honor, that in their motion, in their amended motion, they refer to the other rum producers who are getting some of the Rum Tax remittances.

And when we file a motion, I'm sure the Court has noticed this, even when we reply to a motion, we add a box to the caption showing who the moving party is and who the respondents are. Ambac doesn't do that.

So it's like, well, anyone who shows up who replies might be a respondent. And that's what most people do, in fairness, so they're not out of the mainstream. But here, since they didn't identify, at least some of the other rum producers are concerned, and now they're wondering are they targets.

And one of them filed a pleading. And I had asked if they could have a minute or two to argue, and with the Court's permission, I'd like to let them do that. They have a response on file for this hearing.

THE COURT: Yes. That's Serralles I think it is?

MR. BIENENSTOCK: Pardon me?

THE COURT: I was trying to remember the name of the firm, but the answer is yes.

MR. BIENENSTOCK: Thank you, Your Honor. It was joinder by Serralles. That's the client presumably to the Oversight Board's opposition.

THE COURT: Thank you.

MR. ZOUAIRABANI: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ZOUAIRABANI: Nayuan Zouairabani from the firm of

McConnell Valdes.

Your Honor, in terms of the Amended Motion -- or the Proposed Amended Motion, and going to the topic of prejudice, their Amended Motion, Your Honor, unlike their first motion, on paragraph four specifically mentions that among the relief the movants wants to seek would be an action against the rum companies and to halt the Rum Tax remittances.

Now, this was not envisioned in the original Lift Stay Motion. This is new. As we've mentioned in our previous pleadings, specifically at docket 7912, we explained how the waterfall of these Rum Tax remittances are shared between the Commonwealth and other parties. And we specifically highlight how the appropriations or the part of that money that is being held for the benefit of the Rum Tax companies, they do not enter in the Commonwealth coffers. We're talking about a different pot.

So this amended motion, which identifies the rum companies 14 times, indicates that they're subordinate. They're basically -- the movants are bringing us into the fight.

And the reason we're standing here today and we join with the Oversight Board is we have serious concerns as to the implications of what these amended motions would have on the rum companies, and the prejudice this would create, as it was not originally envisioned in the first motion.

I would be remiss not to remind that the rum industry is one of the biggest and largest industries, not just in Puerto Rico, but in the whole Caribbean. It employs hundreds of people, and the repercussions of what the decision may be could have disastrous results along the island.

So we just want to bring to the Court's attention that by adding the rum companies into the mix, that does create or could create a big prejudice, and that's one of the serious concerns we have with the Motion to Amend.

THE COURT: Thank you.

MS. MILLER: I'm going to resist, despite all of the litigation urges that live deep inside of me, from engaging on the substance of a lot of Mr. Bienenstock's presentation. Let me start quickly with the rum producers. They are squarely at issue and implicated in this litigation.

The Commonwealth, in 2015, on the verge of financial crisis, decided to subvert the existing scheme and to enter into --

THE COURT: I've read your bifurcation of the lock box argument.

MS. MILLER: But the notion that they're new and that they're implicated by amendment is absolutely false. The enforcement -- one of the actions that we're seeking to lift the stay to have continue -- I don't need to lift the stay to sue the rum producers. I can go ahead and do that if I have

standing and if I have a claim.

But one of the underlying actions is the one against the Federal Treasury seeking to impose a trust account on the mainland to all of the excise taxes, so that they won't be improperly diverted downstream, and so all the rum stream -- Rum Tax, Excise Tax stream -- sorry. The entire Excise Rum Tax stream has always been implicated in the underlying action. And to the extent that the rum producers believe that they are entitled to portions of that money, that's been at issue from long before these cases ever started.

So there's certainly no prejudice there and nothing in the Amended Motion, other than making that clear. And frankly, given the statements in court today, I'm glad that I did so, that we're all on the same page about it, changes the status quo on that.

Just a couple of points responding more on the procedural angle, and one relates to the scope and nature. And we're sort of hybriding between this motion and the next motion, and so I was going to reserve some discussion about what I think, you know -- their comments on scope is kind of for the second one, so I'm going to --

THE COURT: So let me say this. I would like to finish this argument with a focus on amendment, but there is very much in play, for the overall strategizing and structuring of revenue bond litigation, the question of

whether and how, if I say yes, gating issues would be addressed in relation to the full scope of issues, including any factual issues upon which the tracing and transmittal memo arguments may -- I've totally lost myself grammatically, but I think I've made my point from the way you're nodding.

MS. MILLER: Yes. I've got it.

So that's how I've been thinking about them. So I'm going to hold my comments on discovery and what I think the scope is. And so some of Mr. Bienenstock's comments will go unresponded to on this motion.

THE COURT: Yes.

MS. MILLER: I'll respond to them on the next motion.

One point, though, is an important one I think for us all to have in mind as we think through these issues. And Mr. Bienenstock suggested that there may be circumstances where this Court could finally decide issues on a Lift Stay such that they wouldn't have to be decided at the end -- such that they wouldn't have to be decided in the adversaries and essentially moot at the adversaries.

That's not how lift stays work, and that's not the goal of lift stays. Lift stays aren't -- even a final lift stay hearing doesn't finally determine the rights of the parties, much like you could win a preliminary injunction on failure to show a likelihood of success on the merits and you would still then have to move. Now, your motion could be very

simple at the end of that, but you would still have to move for summary judgment on the substantive underlying complaint. That preliminary --

THE COURT: I register Mr. Bienenstock's point more as to an issue preclusion or collateral estoppel argument than a direct applicability argument, but maybe I'm wrong.

MS. MILLER: So that's why I want to be clear. From an issue preclusion, collateral estoppel standpoint, the standards are different. So I don't think it can carry over from a -- it's the same judge, and you're going to make the same arguments, and she's clearly giving you a really good sense of how she views the issues and what your likelihood of success on them is.

So maybe when you think about what your next move is and how strongly you want to be advancing that argument, or how you want to be assessing your likelihood of success on the final, you know, actual substantive question, there's no doubt that that's a relevant piece. But from a technical -- can you be collaterally estopped, can it be law of the case, it's just a preliminary determination on the likelihood of success.

Our objection to proceeding with the adversary, frankly, is that that's not the right forum. And Mr. Servais is going to address this in the next motion. But it's not the suggestion that lift stays are a more efficient, or fast, shortcut way to get to a final determination on any of these

issues. That's not the purpose of a lift stay.

The lift stay is to just say, can I get into another court that has proper jurisdiction to make that final determination on the substantive issue so that we can get final clarity on the issues presented.

So from a procedural standpoint, I thought that point needed clarification. Thank you.

THE COURT: Yes. Thank you.

Thank you all for your arguments and your submissions.

Rule 15 is a liberal standard. The rule itself instructs that the Court should freely give leave to amend where justice so requires. And the First Circuit has characterized the standard as liberal, and stated that there are only limited reasons for denying a prejudgment motion to amend, including undue delay, bad faith, futility, and the absence of due diligence on the movant's part.

I find that the movant has demonstrated that the proposed amendments to the PRIFA Lift Stay Motion would potentially resolve at least one aspect of the standing dispute, would streamline the issues before the Court, and would eliminate the possibility of an inefficient scenario whereby the Trustee files a separate lift stay motion related to PRIFA.

Thus, the amendments proposed are not futile. None

of the other grounds for denying leave to amend has been established, and the Motion to Amend is, therefore, granted. And the Court will file a short order stating that. And this relates to the Motion to Amend at docket entry 10109.

Thank you.

And now we will turn to the objections and conference with respect to the Interim Revenue Bonds Order. And I understand that you have a lineup of speakers. Are we starting with the Oversight Board?

MR. FIRESTEIN: Your Honor, good afternoon. Michael Firestein of Proskauer on behalf of the Board.

THE COURT: Good afternoon.

MR. FIRESTEIN: I think it's up to the Court, but given the sequence of filing, if you'd prefer the Board to make its observations first, as distinguished from the objectors, we're sort of getting a little lost in the shuffle with all the papers that have been filed, but I'm happy to indulge the Court in whichever order you would prefer.

THE COURT: Well, since the Board seems to have shifted its position on a couple of the issues that are raised in the objections, specifically the, you know, target date and context for a final hearing and a new -- what seems to me a new approach to the 305 argument in relation to the adversaries, and it seems to me, you know, an argument that 30 -- well, I guess it's the argument that 305 would -- sorry.

Let me put it another way.

The Board has said that if the Court were to find that there is a property interest of the bondholders and monolines as their subrogees in this money, then the Board may consider consenting to adequate protection. It seems to me that the Board is trying to drive this toward bifurcation of standing in terms of creditor of a creditor and security interest. And then, to the extent those are established, to a litigation strategy that would, through adequate protection, keep issues here and try to convince people that they don't have a 305 problem.

And that is a different state of play from what we were working with in December, so I would like you to be clear on where the Board is on these issues now so that the objections can be presented in the context of what seems to me a shifting landscape.

MR. FIRESTEIN: I'd be happy to do so. If I can just grab my papers then, Your Honor --

THE COURT: Yes.

MR. FIRESTEIN: -- because not realizing I was going first, but I'm happy to do so --

THE COURT: Thank you. And of course, if I am reading you wrong, you will let me know.

MR. FIRESTEIN: I don't think you are.

Once again, good afternoon, Your Honor. Michael

Firestein of Proskauer on behalf of the Board.

Given the last argument, I am of the feeling that the coming attractions may have actually been a viewing of the feature film, but nonetheless, let me see if I can't proceed to address the issues in some orderly way for the Court's consideration.

Pursuant to paragraph seven of the Court's Order that was dated December 27, the purpose of this hearing is to determine whether anything needs to change in the Interim Order regarding revenue bonds prior to the March 4th hearing relating to the amended report of the mediators, which we expect to be filed on or about February 10th, unless some other intervening act occurs. I don't have one in mind, but that's the current date set for its filing.

I don't want to bury the lead in connection with this. The answer is largely now, and I use the word largely on purpose, most assuredly not the suggestions of the revisions that the monolines propose.

That said, as we noted in our papers that we filed on Monday, which I think might be the papers that the Court was actually referring to, which was in response to the objections that were filed by the monolines last week, there are certain key gating issues that do need to be addressed.

And to echo Mr. Bienenstock, and I don't mean to be redundant, but in the context of this conference, I want to

make sure that we get our exact position directly on the record. The sooner that we can get those determined by the Court, the better off all parties are going to be in terms of knowledge and a path forward.

As we frequently pointed out, most assuredly lately, the goal is to quickly and efficiently, to put it in shorthand, address the issues of standing and secured status or other property interests, if any, of the monolines as it relates to certain Commonwealth revenues retained by the Commonwealth and historically appropriated to PRIFA, HTA and CCDA.

While there may be other matters of import to address, be it a plan confirmation, or sooner, those gating impediments -- or those are gating impediments to advancing consensual restructuring agreements and plan confirmation. There are two current paths forward to obtain these rulings under the existing Order.

The Lift Stay Motions -- and I'll address Ms. Miller's comment as to the finality or lack thereof in connection with any determination relative to lift stay that the Court might make. To some extent, I actually think that makes our point with respect to the adversaries, unless and until there is some exacting bifurcation that occurs, but the Lift Stay Motions that were filed by the monolines and the adversaries that were filed by the Board -- or at least three

of them which relate to the claims of the Commonwealth on the monies in question.

And within the adversary context, there are actually two subpaths that could be used to accomplish the goal. One is the 12(b) and 12(c) motion practice that is already established in the current Order, or perhaps on an expedited basis and not currently in the Revenue Bond Order, but alluded to in the papers that we filed, Rule 56 motions on discrete claims alleged in those adversaries. Mind you, Your Honor, not all of the claims. Those are comprehensive complaints that were filed. But certain ones that can and will address most easily the gating issues that we're focused on here.

And that's the last I'm going to speak about Rule 56, because it is not here, but it is something that is in our minds about a means to get to the place where we need to be.

As the Board noted in its filing on Monday, even though the adversary complaints are the preferred manner to obtain these merits-based rulings, and, if needed, the expeditious schedule that I spoke about a moment ago, the lift stay could serve as an alternative. And the PRIFA model, if I can use that term, could be the basis for doing so on those gating issues.

As everyone knows, lift stay motions, and I know Mr. Bienenstock spoke to this issue, and of course this Court

is well aware, can be decided on many grounds unrelated to the gating issues that I've described, and can consume considerable time and resources. If the Court -- but if the Court were inclined to bifurcate, much like PRIFA, the HTA and CCDA Lift Stay Motions, and I use the word bifurcate in the vernacular or in the common sense of the word as opposed to its legal terminology -- because the preliminary hearing which is set for February 27, or whatever date the Court ultimately picks for that, could serve that very purpose.

And so in response directly to your question, Your Honor, we invite the Court to treat that hearing for exactly that purpose if the Court can and will do so. The briefing will be complete. The very legal, gating issues we're discussing will be before the Court, including the enabling acts, the resolutions, contracts, and related materials. And the Court can make a legal decision on those issues in addition to whatever other issues the Court believes are necessary to address at that time.

And that's the goal. The monoline suggested revisions to the Revenue Bond Order would not accomplish that. We explained the reasons for that in the brief that we filed the other day, and that I know the Court has reviewed carefully given the Court's comments. But I want to highlight a couple of important points.

The notion of staying the adversaries, as the

monolines suggest, is antithetical to the notion of expeditious resolution. The notion to proceeding to a final hearing on the Lift Stays without knowing for certain that the gating issues are to be resolved is, and I don't mean this in a pejorative sense, but it's deceptively designed to potentially accomplish the same thing, which is delay.

Simply put, if the lift stay path is pursued, there is no benefit to going through the entirety of the lift stay process. And the Court commented earlier about all these other evidentiary issues that might occur, including a hearing, much less discovery, that would be associated with that, which I'll comment upon in a couple of moments.

If there is no property interest to protect, that's what we understand the purpose of the February 27 hearing to be, among other things, and I think the language of the Order is pretty clear with respect to that -- I think in each instance, the Court noted that the February 27 hearing would be limited to the items identified in Section 1(d) of the Order, which talk about these various components in the Court's own words, not necessarily the ones that I've characterized here.

In our mind, it's baffling to understand why the monolines simply don't want those issues to be determined as soon as we possibly can.

THE COURT: Okay. Just to be clear, the December

Order uses standing and secured status specifically in relation to the PRIFA Motion.

MR. FIRESTEIN: Correct.

THE COURT: And all those other words about that are in 1(d) as the subject matter for the preliminary hearing were words that were offered up by the Oversight Board --

MR. FIRESTEIN: Correct.

THE COURT: -- that I adopted and put into that Order in the context of the Oversight Board taking the position that essentially nothing should happen on the Lift Stays until the dispositive motion practice in the adversaries was completed. And you don't seem to be saying that anymore.

MR. FIRESTEIN: Well, I am, Your Honor, in the following sense. It has always been the goal of the Oversight Board to get a determination on the issues that we've described.

THE COURT: But all a 12(c) motion is going to do is say whether he's stated a claim.

MR. FIRESTEIN: Well, perhaps, but in addition to that, as thinking has evolved, it is entirely possible that on a small handful of claims, a Rule 56 motion could also be brought that would provide further guidance, maybe the ultimate guidance, on whether there is, in fact, a property interest.

THE COURT: That's not in the current Interim

Order.

MR. FIRESTEIN: That's correct. That's correct.

THE COURT: And you're not telling me everybody in here has agreed to that, so --

MR. FIRESTEIN: Well, no, but subject to the stay being altered relative to that, if that were the path that we were permitted the opportunity to pursue, we would likely do that. But you're right, it's not currently in the Order here today.

If there is another motion that's brought -- this is an issue, Your Honor, as I understand this hearing, what has to be done to these Orders, if anything, prior to anything occurring on March the 4th. And that's the limited scope that we're talking about.

What they have come in and suggested is that they want the adversaries to be stayed. If the Court is prepared to make some kind of determination relative to the gating issues on the 27th of February, in conjunction with the accumulation of briefing material that the Court will have, we are agnostic to the notion of which process is necessary to get there. Our goal is to simply achieve the ruling.

While we think we're right, and I'm sure the monolines believe that they're correct with respect to that, the answer is what's going to matter. It's going to inform people relative to how they choose to act in further steps

relative to the litigation.

At long last, Your Honor, isn't this what the purpose of what the original stay and directive to the parties to go to mediation was all about? Figure out a way, not the Court's obligation, but just generically, try to figure out a way pursuant to which significant issues can be resolved that would allow these cases to merge out of Title III.

We don't -- we don't necessarily have a preference whether that occurs in the context of gating issues pertaining to lift stay determination in the preliminary hearing or otherwise, or in the context of the adversaries, but we want it to happen in one way or the other.

THE COURT: Well, can you -- is there any reason you can't live with a gating issue oral argument date that I might call a preliminary hearing on the Lift Stays on the current schedule, which is February 27, with the supplemental briefing attendant thereto? And the motions to dismiss the adversaries still being due I think on February 27, if I don't stay the adversary aspect of the Order?

MR. FIRESTEIN: I'm trying to think of a one-word answer, but correct.

THE COURT: You don't have to write those motions to dismiss. You get time later to respond.

MR. FIRESTEIN: Well, Your Honor, in all fairness, we've had plenty of things to write over the past several

days. And unfortunately, the Court is then burdened with the obligation to read them.

THE COURT: And I've been doing some composing myself.

MR. FIRESTEIN: Right. And worse yet, make determinations relative to that. But those will all be informative.

But of course if the Court's inclination is to use the February 27 hearing as a means to an end to resolve those issues, to the extent the Court is able to, on the briefing that comes forward -- I mean, look. The Court -- we know what we are writing in the briefs that are being filed tomorrow, for the most part. The Court is unaware, and certainly our adversaries haven't seen it yet, but I think the way the briefing has been currently staged to the Court and what you can anticipate coming from the Oversight Board in its timely filings tomorrow is exactly that, to enable the Court to make that precise determination.

And that's why I started this by saying largely, no, we don't believe any change is necessary. And really, I think I could even take away the word largely relative to that. If the Court is able to conduct that hearing on the 27th, and with all deliberate speed be able to guide the parties regarding what the answer is going to be on these complicated but discrete issues of secured status.

And by the way, if you do, if the Court does do that on the 27th, we certainly don't have to talk about 305, although I'm prepared to do that, because the Court did correctly note that that seems to be something that is in the air relative to concern that a number of parties have had regarding its implication.

But in the context of the very motions or complaint or whatever one wishes to call it that the monolines have filed for this preliminary hearing relative to the 27th, 305 doesn't become an issue. But we still need the Court's answer to the question regarding standing and secured status.

THE COURT: Let me jump ahead a little bit to the discovery issue. It seemed to me, reading at least the amended PRIFA papers, that there are arguments about the transmittal memorandum and subaccount facts being ones relevant to the stay relief went certainly to the quantification and tracing of a res but also it wasn't clear to me, but maybe was part of their argument for the existence of a security interest.

So to the extent you are arguing that there should be no further discovery pending a determination on the gating issues, and they're saying, we need to pin down the transmittal memorandum and the existence of designated subaccounts as a core factual component of our argument that we have a security interest, would you be willing to stipulate

to those facts for purposes of that preliminary hearing, or make rapid fire, focused discovery on those particular issues?

MR. FIRESTEIN: Well, two points: One, we'd be happy to consider stipulation with respect to things in particular. I can't really do this standing at the podium.

THE COURT: Yes. But I'm floating the idea.

MR. FIRESTEIN: And we'd be happy to consider that issue. But the notion of rapid fire discovery has something that -- has not been something that the parties have been able to come to grips with collectively, as the Court is well aware given the Court's Order last week.

So I don't -- you know, I always like to be cautiously optimistic that old dogs can learn new tricks, but I also am pragmatic about the parties' ability to actually come to grips with what would be a narrowly focused discovery.

And I don't know whether that discovery is something that is actually directed to us as the Board. It's probably more likely directed to AAFAF under the circumstances, so we would need to consult with AAFAF on that point.

THE COURT: AAFAF is generally a fellow traveler on these positions, except for the preemption argument, yes?

MR. FIRESTEIN: Correct. And they have not joined the preemption argument, my suspicions is, for reasons other than Ms. Miller has articulated. They have their own reasons for perhaps doing so, but I'm not here to speak for

Mr. Friedman. And what I really want to do is not be in a position where I'm committing AAFAF to something standing at the podium without having had an opportunity to discuss it with them in advance.

THE COURT: Just hear what I just said as a warning that if I'm going to go with this bifurcated process, and they're going to say they'd be hobbled on their security interest claim if I bifurcated it that way without giving them discovery, I'm going to need you to respond to that in some procedurally meaningful way and factually meaningful way. So it's something you would need to work on.

MR. FIRESTEIN: Your Honor, it's no different than what would come up in the context, by analogy, of Rule 56(f), right, where someone says, I need discovery in order to defeat this claim, and you have to make a showing as to why it is that that discovery is necessary and meaningful to the issue that's being addressed.

And I'm not saying that Rule 56 applies here, but what I'm trying to communicate is that I don't understand the point, and if there is something --

THE COURT: What I'm saying is I'm trying to hold the February 27 argument schedule. There are briefing deadlines, so somebody has to get practical on both sides around here if we're going to do at least a gating issues hearing on the 27th to move forward.

MR. FIRESTEIN: I understand. May I? May I have just one second, Your Honor?

THE COURT: Yes. You may or may not be broadcasting through that microphone.

MR. FIRESTEIN: I think what he said would not have mattered if it had been generally understood.

So I think the notion of the stipulation that Your Honor commented upon is something that I'm loathe to do in open court without having had the opportunity to think about it, but I believe that there is traction that could be achieved on that score in order to be able to accomplish it.

And in the absence of a stipulation, I hear the Court loud and clear relative to the procedural aspect of needing to get to a place where if the Court's prepared to do it, that the resolution would be meaningful on the 27th.

THE COURT: Thank you.

MR. FIRESTEIN: Okay. Well --

THE COURT: Mr. Friedman.

MR. FRIEDMAN: Your Honor.

THE COURT: You need to be near a microphone, and I think that may be the only one that broadcasts to everyone.

MR. FRIEDMAN: Just we can agree, for AAFAF's perspective, that we will meet and confer as part of this process, as fellow travelers as it were, with the monolines with respect to a stipulation, or, if necessary, some form of

limited discovery. We'll certainly commit to that.

THE COURT: Thank you.

MR. FIRESTEIN: And Your Honor, even though the hearing is currently set for the 27th, if because of the accumulation of material or whatever needs to happen in the interim -- we're not particularly interested in prejudicing one side or the other on that score.

I recognize that it's the Court's Orders and the Court's directives. And there is an Omnibus that is set the next week or -- you know, to us, it's cast in stone on the 27th because that's how the Court has directed it. But from the Board's perspective, it would be fine from our point of view, in fact, it might be preferable to achieve the very objective that Your Honor's thinking about to move that hearing, although I don't particularly have a date in mind under the circumstances.

But I merely offer that as something that -- in order to accomplish the objectives the Court has laid out.

THE COURT: Well, I invite you all to meet and confer. And if there is a joint proposal for revision of the briefing and/or hearing schedule for these issues that can work with my calendar, I'm quite happy to consider it.

MR. FIRESTEIN: We'll put that on the list of things we need to do.

THE COURT: Thank you.

MR. FIRESTEIN: But given the way that this has become focused, I had remarks relative to 305 that I was prepared to address to the Court, but if we're going to proceed down this hopeful path of trying to have it done in conjunction with however we wish to call the hearing regarding the Lift Stay Motions, I don't know that they are particularly pertinent, but I'm more than happy to simply note that we meant what we said in the papers, pursuant to which the monolines requested that the 305 references be discarded from the Revenue Bond Order.

And Your Honor included that at admittedly our request, and it was merely a provision of what our position is, but 305 is what it is. And whether there is a waiver or impediment that 305 produces is irrespective to a recitation in a Court Order as to what our position is on that issue. And if that solves that particular issue, we're happy to have that modification made to the Revenue Bond Order.

THE COURT: So that's the excision both of the paragraph that I've been told originated with the mediation team, and the paragraph that I added that recites the position that was taken by the Oversight Board in December?

MR. FIRESTEIN: I believe that that's true, Your Honor.

THE COURT: All right.

MR. FIRESTEIN: And so again, I put to the -- well, I

respectfully ask the Court, if you want me to discuss 305 in the context of the adversaries -- but I'm not sure that's currently the path we're heading down under the circumstances.

THE COURT: I think in the interest of time and efficiency, I will not ask you for presentation on 305. I'll let you rely on your papers here. If in any of the comments by the bondholders or the monolines that becomes an issue, I'm reserving your right to come back and talk about that some more in reply.

MR. FIRESTEIN: Thank you.

THE COURT: Thank you.

MR. FIRESTEIN: Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Firestein.

All right. So I understand that first up will be Assured.

MR. SERVAIS: Thank you, Your Honor. Casey Servais from Cadwalader Wickersham & Taft on behalf of Assured.

We also had a game plan which has potentially shifted somewhat in view of your remarks and the remarks from Mr. Firestein. So I'm not sure exactly what order we'll be speaking in, but I guess I am, in fact, going first.

THE COURT: Good afternoon, Mr. Servais.

MR. SERVAIS: Good afternoon.

So the main focus of my remarks had been on our

objection to the language inserted into the Interim Revenue Bonds Order characterizing the hearing on the Lift Stay Motion as a preliminary rather than a final hearing and limiting the scope of the issues. We still have that objection. We do not see any need for a preliminary hearing.

Generally, a preliminary hearing is only necessary where there are exigent circumstances that do not permit a final hearing within the timelines established under Section 362. That doesn't exist here, because those timing protections are intended to protect us as secured creditors.

We are willing to waive those timing requirements in a limited way, to a limited extent, for the purpose of having a final rather than a preliminary hearing, but our goal is really to not have the issues restricted certainly in the way currently reflected in the Interim Revenue Bonds Order and to have a hearing that will result in a final Order that could be appealed immediately if necessary.

And so it's not entirely clear to me to what extent Your Honor's thinking has shifted in terms of the way that you've characterized the preliminary status of the hearing in the current Order, but we do not want a preliminary hearing in the sense of Section 362(e). We think there should just be a final hearing under 362(d).

THE COURT: Well, let me try to put it this way. It does seem to me to make sense, and I can give you within the

month a hearing and my best effort at a determination on these gating issues. You know, I could probably do it based on the papers, but I would prefer not to, and I would benefit from an oral argument. And then depending on the outcome of that, maybe I do a, you know, 54(d) type certification of it as a final and appealable order if you all ask me to.

To have a final final hearing including addressing factual issues of tracing and subaccounts and everything else, it isn't in any world that I see practicable for February 27. And so we'd be talking a longer schedule.

Now, if what you want is a longer schedule where I say nothing about gating issues and nothing happens until this bigger hearing that may include detailed presentations and arguments on issues that I ultimately won't get to, I'm not excited about that as a good use of my time or anybody else's. So it seems to me, inconsistent with your desire to have this moved, and moved as promptly as possible along a line that can lead to that final hearing, if that's necessary, that consenting to time for the briefing and the holding of the February 27 session -- and what I was thinking about in terms of logistics would be something like a meet and confer within two weeks after my decision on standing and security interests, with the filing of a joint proposed litigation and discovery schedule within a week after that. And a stipulation as to the stay going forward after that, or

positions on the stay going forward after that.

And I think for this all to be practicable, I would need today a consent to the continuation of the stay until call it -- you know, three weeks after the Joint Status Report is submitted, just so that there's room for me to decide, room for you all to meet, room for you all to develop and me to consider the structure for how we get to the final final hearing.

I'm not in a position to state a specific date for the final hearing today, and that's the whole point of looking at gating issues first. But if you're going to tell me, you know, you're not going to consent to waive 362(e) past, you know, February 12, I frankly don't know what you want me to do, because you're telling me that you don't have the record you need for a final hearing. And we're certainly not going to have a final hearing tomorrow or tonight or February 12.

So February 27th is the earliest date I can give you where I'm committing to you to try to make the kind of progress that you want toward your goal of a final hearing if necessary. So you tell me what you want.

MR. SERVAIS: We would prefer to have a single final hearing and not a bifurcation of issues.

And I would actually point out that the Court did set a schedule for proposing modifications to the Interim Revenue Bonds Order. The Oversight Board did not comply with that

schedule in making this bifurcation request. The first time they raised this was in the Reply a couple of days ago.

And the whole purpose of this hearing was when the Oversight Board made its initial response to the mediation team's report, we did not have an opportunity to respond with briefing to that. At our request, Your Honor did provide us with an opportunity to respond in briefing, but the Oversight Board has now simply recreated the same problem because they've sprung on us a new proposal that we again have not had an opportunity to respond to.

So our request, as reflected in our January 21st Objection, is that there be, in compliance with Section 362(d), a final hearing on our Lift Stay Motion, where a stay of relief will be granted or denied. We are willing to waive Section 362(e) to the extent necessary to make that happen in as expeditious a manner as possible, but the goal of the final hearing is ultimately probably more important than any kind of extreme expedition.

And the purpose of that is the Oversight Board has stated the goal of getting to merits rulings on these important issues. As Ms. Miller already noted, a ruling on a lift stay motion will not be a merits determination, so the question becomes what is the correct vehicle for a merits determination.

In the Title III context, the only vehicle, as the

Oversight Board has acknowledged in its papers, would be an adversary proceeding. However, we've already attempted to litigate these revenue bond issues in an adversary proceeding, and the response from the First Circuit was, well, the Title III Court can't hear your issues because of Section 305. Yes, that may violate due process, the fact that you're not able to raise either your constitutional or your statutory issues in the Title III Court. What you should do is seek stay relief and then bring an action in another court.

That is what we see as the ultimate vehicle for a merits determination, and that's what we're trying to get to as quickly as possible.

THE COURT: So --

MR. SERVAIS: So the end goal is not --

THE COURT: May I interrupt you?

MR. SERVAIS: I'm sorry, Your Honor. Yes.

THE COURT: And I asked Mr. Firestein not to talk about his 305 position, but as best I can read the new choreography on 305, and he'll tell me if I'm wrong on this, but I think the Oversight Board is saying, see our adversary as an objection to your claim. If we can't succeed in expunging your claim as unsecured because you have a property interest, then all the constitutional arguments attached to disposition or treatment of that property interest, including a Takings claim or a contracts claim, whatever else, will have

to be dealt with in the context of the Plan.

And so in that way, it would end up getting litigated in the Title III.

MR. BIENENSTOCK: (Nodding head up and down.)

THE COURT: Now, I see Mr. Bienenstock nodding a little bit. I see Mr. Firestein perhaps looking a little perhaps "I'm not sure she's got it." Did I get it?

MR. FIRESTEIN: I think so.

MR. SERVAIS: So we have the statements from them in their Response on December 6. They stated their position on 305, which you subsequently took note of in the Interim Revenue Bonds Order, which is --

THE COURT: They seemed to say forget about that; now we have a new way of thinking about it.

MR. SERVAIS: Okay. So to be clear, what they said in that position statement that was concerning was that they did not consent to challenges to the validity of fiscal plans, moratorium laws, or any other -- any of the other devices that have been used to impair the property interest of the revenue bond holders. But all of those issues of the validity of those different instruments are integral to the issue of what property rights we have, because if the only reason they allege we don't have a property right is because they destroyed our property interest using these fiscal plans, moratorium laws, and other devices, then really the central

issue in the litigation is the validity of -- or in our view, invalidity, of those devices that they've used to attempt to destroy our property interest.

So those are really going to be the central issues, either in the lift stay context, or in the adversary, or hopefully, in our view, an enforcement action outside of the Title III court. So if their position is that those invalidity issues can't be litigated, then that's a major problem and that prevents really an effective adjudication within the Title III court because of 305.

THE COURT: Would you indulge me in letting Mr. Bienenstock or Mr. Firestein pop up to clarify what they're saying, especially as to that aspect of 305?

MR. SERVAIS: (Nodding head up and down.)

MR. BIENENSTOCK: Thank you, Your Honor. Martin Bienenstock of Proskauer Rose for the Oversight Board.

Number one, we think that the First Circuit rulings on 305 each responded to requests by Ambac or other insurers or bondholders for Orders ordering turn overs of property of the Commonwealth, or of another instrumentality of the Commonwealth, or declaring that they should be turned over.

We do not think that the First Circuit in any way said that Section 305 gets in the way of determining whether there's been a taking of property. Those types of issues, which were raised by some of the GO bondholders and probably

the monolines, were lure -- to the extent they were dismissed, they were dismissed because they were requests for advisory opinions.

So our position now on 305 is very simple. As Your Honor just stated a moment ago, in the context of our adversary proceedings, it's nothing but an objection to their claim. The reason it was done by complaint instead of by motion is that their claims include claims to security interests, priorities, et cetera. And Bankruptcy Rule 7001(2) says, if you're doing that, you need an adversary proceeding.

So we did it by Complaint, but, in essence, their Proofs of Claim are the complaints. Our complaints are the reasons why their Proofs of Claim should not be allowed.

In terms of what they can do without any relief from -- without any relief from the Board in terms of consenting to 305, if they think that as a result of the Fiscal Plan or anything else, if there has been a taking of their collateral, or their property interests -- no one has ever said they can't come to this Court and get a ruling and have a claim that their property interest has been taken and the entity owes them something back as a general unsecured claim, a secured claim or something else.

What they cannot do, and it's not a function of 305, it's a function of 106(e), is challenge our Fiscal Plan or budget or anything else that the Oversight Board certifies

under PROMESA. I realize that they say to the contrary, but we frankly think that, for a number of reasons, and I won't even speculate because it will be -- it will just provoke a lot more argument today that won't help get Your Honor to a schedule. But we think they're just dead wrong when they contend that their inability -- they have to be able to challenge the Fiscal Plan to establish a taking claim or any other type of claim. All they have to show is they had collateral; it was taken.

What we're here for is to say they never had the collateral at the Commonwealth level, so it couldn't have been taken. When that issue gets resolved, it will make a lot of this other stuff go away.

THE COURT: Thank you.

MR. BIENENSTOCK: Thanks.

And my colleague asked me to say that in the -- I guess the Order, the timetable was set to be 45 days after the preliminary hearing, there would be a final in the interim case management --

THE COURT: Well, I said it's extended for 45 days. I just tried to make that a little bit more concrete in terms of mechanics to --

MR. FIRESTEIN: It's three sentences, Your Honor. Michael Firestein of Proskauer.

362(e) was already deemed to have been -- the time

was deemed to have been waived to a point 45 days after the preliminary hearing that is currently set for February 27th or whatever date it ends up being. That's on page six of the Order. So we don't have to debate.

I think Your Honor was struggling with when one gets a final hearing and whether there's a waiver or not a waiver under the circumstances, and the conclusion has already been reached in the existing Order. And I think it would be difficult to seek to modify the Revenue Bond Order to somehow retract the waiver that has already been determined pursuant to the Court's Order under the circumstances.

THE COURT: Okay. I don't want to, you know, go down a spiral drain. I will just note that I think it was in a footnote in their Reply on the Motion to Amend that Ambac at least said something like, well, deemed waiver doesn't work; we didn't agree to that; we have a position that the whole stay expired in November, but we'd be willing to agree to something else.

And, you know, I don't want to take the time to try to adjudicate whether that particular Order binds them forever if they're willing to agree to something that will, as a practical matter, let us get somewhere today. That's why I raised that.

MR. FIRESTEIN: Happy to accomplish it. I'm just raising it, that that had been the Order.

And I recognize the distinction between PRIFA on the one hand and perhaps HTA and perhaps CCDA on the other. Of course the Court has now ruled already on the Motion for Leave to Amend, and so we find ourselves in this current circumstance.

THE COURT: Yes. Thank you.

MR. FIRESTEIN: Thank you.

THE COURT: Mr. Servais.

MR. SERVAIS: So with respect to Section 305, and this is primarily relevant because it explains why the lift stays and the subsequent enforcement action in a non-Title III forum is the best route to a merits ruling, the Oversight Board has mischaracterized the *Ambac* decision. Ambac was seeking to recover special revenues, but in addition, they specifically sought a declaration as null of the moratorium laws and orders in the Fiscal Plan. And they sought that declaration based, for example, on Section 303 of PROMESA, which expressly, in Ambac's view, preempted the moratorium laws and is based on the Contracts Clause and the Takings Clause.

And I don't think the Oversight Board has previously ever taken the position, if they're taking it today, it's news to me, that that Section 106(e) bars constitutional challenges to a fiscal plan. So all of those issues that were already raised in the Ambac adversary proceeding as to whether the

moratorium laws are null under Section 303, whether the fiscal plans and moratorium laws are null and void under the U.S. Constitution, all of those are already raised within the new adversary complaints, because those complaints specifically -- I mean, the Oversight Board has tried to analogize our Proofs of Claim to complaints. We don't think that's exactly right as a procedural matter, but nonetheless, all those issues that were in the *Ambac* Complaint that the First Circuit said this Court could not rule on, are raised in our Proofs of Claim and they're raised in the objections to the Proof of Claim.

Even if that were not the case, the current Interim Revenue Bonds Order schedules the filing of counterclaims within those adversary proceedings. When we file those counterclaims, they are going to very closely resemble the *Ambac* Complaint. We will challenge the validity of the Fiscal Plan under the Constitution. We will challenge moratorium laws under Section 303. And basically these adversary proceedings will just become a replay of the Ambac adversary proceeding.

The Ambac adversary proceeding did not lead to the types of merits rulings that the Oversight Board is looking for because of Section 305, and it also did not provide due process as the First Circuit seemed to acknowledge when it advised revenue bondholders that the way to obtain due process was to bring an action in a forum where Section 305 does not

apply.

So we do not view the adversary proceedings as a viable vehicle for achieving what all of us would like, which would be merits rulings. We think the steps have to be an initial lift stay -- well, not an initial. A final lift stay hearing on the issue of whether we have a colorable claim or another basis for lifting the stay, leading to enforcement actions in another forum.

And that's really our goal, is to have that final hearing. And so whatever timing or logistics are needed to get there, that is what we -- that is what we would like.

We do not think that the proposals by the Oversight Board today were timely. We think they needed to propose amendments to the Interim Revenue Bonds Order by January 21st. They didn't do that. We shouldn't have to respond to these new proposals on two days notice with no opportunity to submit briefing and response.

THE COURT: Anything further? Did you want to say anything further?

MR. SERVAIS: No. Thank you. Unless you have anything else for me?

THE COURT: I want to hear everybody else.

MR. SERVAIS: Okay. Thank you.

THE COURT: Thank you.

Okay. Who else wants to be heard?

Hi again, Ms. Miller.

MS. MILLER: Good afternoon again. Atara Miller from Milbank on behalf of Ambac.

Just quickly, to close the loop on 305, I don't think this is an issue that needs to be decided today given where it seems the Court's leading on the adversary, but I do believe that whether or not you strike the language, leave the language in in the Interim Order, I think the Board's position on 305 is critical for purposes of the Lift Stay.

And I'm hopeful that there will be a clear statement of the Oversight Board's position on 305 with respect to what it is or is not waiving or consenting to in the papers that it files tomorrow, because I think one of the things that Your Honor's going to have to consider, and one of the core considerations and arguments that we've raised in our stay motions -- in our Lift Stay Motions, is the fact that you have to consider that there is no alternative venue. And that's exactly what the First Circuit said.

So in case there's any doubt that the First Circuit wasn't merely addressing the turnover, actually, if you read through the decision, you know, the First Circuit starts by saying turnover, well, you don't get that. We decided that in the *Assured* case. And you know, to the extent Ambac suggests declaratory relief doesn't violate 305, we address that in the *Aurelias* action.

And then they go on and say, and everything else is still barred by 305. And then they say, to the extent that Ambac's counsel argued that our interpretation of Section 305 raises due process concerns because Ambac would be left without a venue in which to bring its constitutional claims, nothing precludes Ambac from using the mechanisms provided for through lift stay in the Bankruptcy Code.

And then I believe the colloquy at oral argument was, and then if that's denied, you'll come to us and you'll complain about it. And we'll fix it for you if we have to.

So there's no question that 305 I think is going to be an important component of this Court's ability to evaluate the appropriate forum and whether the stay should be lifted. So I want to get back -- I know we've moved sort of deep down the complicated 305 rabbit hole, but I want to get back to just sort of the nuts and bolts of what I think we have before us between now and the next Omnibus, which is really what was at issue.

And some of your comments sort of -- I'm happy for myself, are reflected directly in my notes, including the suggestion that I do believe that we could stipulate or should be able to stipulate to a lot of the facts. You know, I'm reminded, as we're going down this path, that it's not dissimilar from the Commonwealth-COFINA dispute and the COFINA interpleader action where they were similarly very narrowly

construed and limited to, A, in that case, a sole, single legal issue of who owns the SUT.

And there was discovery that was provided for. And I thankfully was spared this, but Mr. Friedman probably remembers it well, when the question was, do we stay in Puerto Rico through the hurricanes to allow depositions to continue or do we come to agreement on a set of stipulated facts. We were able to come to agreement on a set of stipulated facts, and so I'm optimistic that we'll be able to do the same thing here.

I am a little bit concerned, though, that Your Honor's comments -- and I'm concerned about how they're going to be reflected back to us in the meet and confer process -- focus singularly on the two facts that have already been disclosed, and saying, well, they need more information about those two pinpoint issues. And what to me that highlights is the relative positions of the parties here and the information asymmetry.

And so we're in a position now where precluding us from taking basic discovery on the flow of funds, the use of the funds, account ownership, balance information, which we've been asking for for a long time, as Your Honor is aware, puts them in a position where they can selectively reveal information that they think might help them shield from discovery any information that we have, force us to guess what

information might be there.

Listen, kudos to me. I guessed right the last time and I asked the right question. But I could have asked the wrong question also, and then we would have never discovered information that we think is relevant.

We're not asking for broad based discovery, but I'm fairly confident that despite the repeated statements by the Oversight Board that this is a simple case that can be decided on the Statute, the resolution, the agreements and other documents -- I don't know what the other documents is a reference to -- that you're not getting a 65-page opposition brief that tells you how to read the statute and the resolution.

And I'm confident, as we predicted back in the summer, that what we're going to see tomorrow, and as reflected in their opposition to the Motion to Amend, are broad arguments that sweep across a number of factual issues that go directly to the question of secured status and standing, including, for example, clawback, and, you know, what they refer to in their amended motion as the retention right.

There are factual questions about whether it was triggered, whether it was appropriately applied if it was properly triggered, preemption issues, which, as Mr. Servais indicated, implicate all sorts of questions about the Fiscal

Plan and other claims. This is not, even if you limit it to standing and secured status, a question where Your Honor's going to be asked to simply look at the documents, because frankly, if you look at the documents, they know that we clearly carry the burden of demonstrating a prima facie case. Otherwise, they wouldn't be fighting so hard.

I'm not suggesting that the Court preclude them from making those arguments however they want to, but I think we should see these motions for what they are. And if they're going to expand the scope to include every potential legal theory that cuts us down, then we need discovery into those issues as raised.

And frankly, I wish I could come with a concrete proposal and have you, you know, rubber stamp it and say, I agree that's a reasonable scope, because it would make our life so much easier. But I think, honestly, we probably need to see what they put in their papers tomorrow before we can come to you with a proposal, or Judge Dein, or maybe just through meet and confer.

I just didn't want it to be -- your comments to be construed as saying, the only thing we get discovery in is PRIFA, and the only thing we got discovery on with respect to PRIFA are the notations and the, you know, particular, you know, segregation of accounts within the TSA.

THE COURT: Understood. And I thank you for that.

And it may be that you're not in a position to speak definitively to this today, but I'm just going to put the question out. Are the monolines or the bondholders taking the position that there are factual issues that are material to the basic question of whether there is a security interest at all letting -- putting aside quantification and/or whether there is a way to get -- overcome the creditor of a creditor lack of standing argument?

Because my inclination still is, so as not to lose a briefing schedule and a date, in an atmosphere in which I suspect that my calender is more and more going to be filled with briefing schedules and dates as we go deeper into the spring, my inclination is still to keep this February 27th date and briefing schedule on this narrower set of issues; have you all work together on a broader schedule toward a final hearing date that will be done, if necessary, with stipulations and/or discovery provisions going toward that.

And, you know, and that would take us -- that sort of schedule would take us to the March 4th discussion at the next Omni anyway, and we can see where things stand. But that would be something happening. So that's what I am inclined to do. And it doesn't seem completely inconsistent with, you know, your request that you ultimately get queued up for a final hearing. And it gives me the opportunity to think about these other issues earlier, when I have relatively a little

more time. Not a lot more, but relatively.

MS. MILLER: I'm not -- I guess I'm not opposed to holding the February 27th date for a hearing. The question, frankly, is can we get the information that we need.

So to answer your initial question quite directly, yes, I think there are facts that go directly to certain arguments. I think Your Honor correctly noted that, you know, as reflected in the Proposed Amended PRIFA Lift Stay Motion, we think that the notation isn't, and I wrote it down, just a cash management mechanics statement, but that under the law, if there's a specific notation, that a special fund can be created within a Treasury account by notation.

And so if that's a special fund as provided by the statute, then the minute it goes into the TSA with the notation, it's in the special fund and it's part of my collateral. That's one of the alternative arguments that we have that goes directly to whose property is it and who has a security interest in it.

So yes, unfortunately, I think the answer is that there is, and I think it does go to these threshold issues, you know, whether you bifurcate or not, preliminary or final. I think some amount of discovery is necessary on those.

And then I think they're going to raise all sorts of defenses. I mean, I think if you wanted to really narrow it and do something rational and say, okay, all the bondholders

need to do is demonstrate -- make a prima facie showing that they have a security interest, and therefore, I'm going to let them affirmatively make that showing and I'm not going to consider all of the broad swath of defenses, and those will be litigated somewhere else at some other forum -- which is essentially what the First Circuit said, move to lift the stay and then the other Court will determine preemption issues, for example, that I was pressing this Court and that Court to rule on.

THE COURT: Unless the Board gets religion and decides to consent on 305.

MS. MILLER: Right. Right. Which, I mean, honestly --

THE COURT: Strategically or spiritually or whatever, but --

MS. MILLER: Whatever. You know, I almost laughed because time flies when you're having fun, but I've been arguing for resolution of these issues and a determination since 2015, long before you or the Oversight Board were on the scene. And in the notion that someone would stand up and say the bondholders just want delay -- and we're advocating. We are the ones who have paid out at this point hundreds of millions of dollars out of our pocket on claims on behalf of the Commonwealth, who hasn't been making those payments. Nobody wants a determination on these issues more than our

clients.

So, you know, I think we're it seems like for the first time maybe mutually aligned on trying to get to resolution. Unfortunately, I think there is some amount of discovery that goes directly to these issues, and I just don't know how to get around it.

THE COURT: All right. Well, just for what it's worth, and I realize there may be other people on your side of the table that want to be heard, and I told Mr. Firestein he could have a reply, but my inclination at this point is to hold the briefing schedule and argument timing for February 27th on my books as limited -- as argument limited to standing and security interest; and at the same time, direct you all to meet and confer in good faith, candor, realism, and every other constructive factor you can bring to it, on proposing a schedule that efficiently and appropriately gets us to a final hearing on the Lift Stay issues, or a different litigation modality that can promptly deal with these issues if -- and we'll set a date for a status report and the proposed Order.

And you can think about how that would relate to Judge Houser's upcoming report, and if at any point in the arc of the development of that you all jointly say to me, we don't think we can constructively use February 27th and/or we want to short circuit the supplemental briefing that's currently in the schedule because we don't think that can be sufficiently

comprehensive or whatever, I'll take it off. But I don't want to take it off now with no other consensus on or vision of a mechanism.

And I need to set a date for -- you know, unless you're -- okay. I either need to have the bondholders and monolines say on the record you waive 362(e) pending the development of this schedule and/or some terminal date that's realistic, or, you know, give me a terminal date for a waiver of the extension -- of the 362(e) periods now that can be revisited. But I need to get something on the record with you all having an opportunity to have objected to it or consent to it so that I don't see another footnote like the one that I saw in the other brief.

MS. MILLER: So I would agree with Mr. Firestein's comment that we have already, I think at the last hearing, agreed on the record. I think that footnote was actually not suggesting that the amendment started a new clock, nor was it addressing the current waiver. I think there was an interim period where we objected to an extension and the stay was extended over our objection, including an extension of the stay.

But I think at this point we would consent or hold by our consent to 45 days from February 27.

THE COURT: That's good.

MS. MILLER: I don't know if the others --

THE COURT: Is there anybody who would raise objection to that?

(No response.)

THE COURT: We're firm on the existing 45 days past February 27?

MS. MILLER: Yes.

THE COURT: Thank you.

MS. MILLER: Right.

THE COURT: Sorry if I panicked unduly about that or not unduly --

MS. MILLER: No. I mean, I feel like I should put on the record, as we did in the footnote, without prejudice to arguing, that the extension over our objection previously was improper. But that's not for you to decide today. We've got -- we certainly won't argue that this has any impact on that. We are consenting to 45 days from February 27th.

THE COURT: Thank you. All right.

MS. MILLER: So I don't know, Your Honor, if you're finished with your remarks, and I always hesitate to ask a question after the Court's issued remarks, but the only thing that's not clear in my mind is whether you're contemplating any meet and confer and discussion of potential stipulation or relevant factual inquiries before the February 27 hearing?

THE COURT: I think there needs to be --

MS. MILLER: Okay.

THE COURT: -- because as I said, I'll be open to a proposal to take that one off track in favor of something else.

So there's opposition papers due tomorrow, and then I think there are some supplemental briefing dates in that February 27 schedule. So we'll want to get the meet and confer in before that, so meet and confer by February 7th. That would be a week from Friday.

MS. MILLER: I think that's fine. We can talk. I think we have a meet and confer on the existing 2004 Monday, so maybe it makes sense to role it into that. But we'll confer with AAFAF and the Oversight Board.

THE COURT: Great. So just as the bidding stands right now, I am going to revise the Interim Order, and this is subject to Mr. Firestein being heard, but I think where I am now is that I'll revise the Interim Order to take out the references to considering whether there are compelling circumstances to put the merits off to coincide with the Rule 12 proceedings on the adversaries.

I'm going to say that the preliminary hearing for the 27th is limited to standing and security interest issues, crossing out all other references to 1(d). Hold on a second. I'm going to delete all of those two paragraphs about 305. I am leaving in the 45 days stuff.

It seems to me that right now, since we do -- are

going to move forward and meet and confer and specifically address discovery in connection with the Lift Stays, I don't have to do anything right now to those paragraphs about discovery and applications to amend the schedule.

Let me just see if there's anything else that I flagged on here.

So I think that that would be it. And I'm leaving all of the adversary proceedings scheduling stuff in place as written right now.

MS. MILLER: Your Honor, if we're going to proceed, I think that sounds right based on the conversations subject to Mr. Firestein's comments. The only thing that I would request, quite respectfully, is that if we're going to stick with the preliminary hearing structure, that Your Honor write in I guess a willingness to issue a certification of any ruling coming out of the preliminary hearing on standing and secured status under Rule 54(d).

I don't think that hubbub was related to my last comment.

MR. FIRESTEIN: No. No.

THE COURT: Okay. So something -- I'm trying to even think of where -- to see where I would put that. There must be a paragraph where I talk about the February 27th hearing -- yes. This is paragraph (d), that's on the bottom of page five. So this isn't -- 1(d) was the paragraph that had the

February 27th hearing, so I would edit it to say that there'll be a preliminary hearing to determine standing and secured status.

And just one second. Okay. I propose to put in a sentence, the Court will entertain applications to certify for appeal the Court's decision with respect to those issues.

MS. MILLER: Thank you, Your Honor.

MR. FIRESTEIN: I have a preview --

THE COURT: So Judge Dein has pointed out that it might be better to have an earlier deadline for the meet and confer than the 7th, because if you are going to be brewing up any discovery issues that you need her to hear in relation to the February 27th proceedings, you're going to have to ask her for a hearing the week of the 10th. And so Judge Dein needs to reserve time; she needs to have fair notice of what the issues are; and you need to prepare for that.

MR. FIRESTEIN: Got it. One moment, Your Honor.

THE COURT: Excuse me, folks. Before you all finish your confab and before I call on Mr. Firestein, Judge Houser, who's been listening, has requested to be heard. And so if you don't mind, I would like to invite Judge Houser to speak now and then you may want to confer further after that.

MR. FIRESTEIN: Okay. I'll be seated.

THE COURT: Yes. Thank you, Mr. Firestein.

Welcome, Judge Houser.

I think you have to open her line.

COURTROOM DEPUTY: It's open.

THE COURT: Judge Houser, would you say something? Because we're not hearing you.

All right. Hang on there. We're trying to make sure your line is open.

All right. The machine is telling us it's live, but we're not hearing you, so we're attending to that. Just hold on. In the worst case, I'll dial you up on my cell phone and hold that up to the microphone, but we're trying to avoid having to do that. I don't want to have to cut off everybody and have everybody dial back in, so thank you all for your patience. We're working on this.

Okay. Judge Houser, I'm going to call the mobile number that you provided and hold it up against my microphone, and we'll hope that works.

RECORDED MESSAGE: You have reached XXX-XXX-XXXX. I can't come to the phone right now. If you'll leave your name and number, I'll return your call.

THE COURT: Tell her we got voicemail.

Judge Houser, try speaking, please.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Hello.

THE COURT: Okay. We've got her. Thank you so much.

All right. Judge Houser, you'll need to speak up a

little bit. You're a little bit faint.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: All right. Let me do that. Can you hear me now, Judge Swain?

THE COURT: Yes, I can. And if you could project even a little more, I think that would be helpful to everybody.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: All right. How's that? Is that better?

THE COURT: Perfect.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Okay. First, sorry for any inconvenience. I don't know why we were having difficulty unmuting the line, but I guess we got that solved.

So I have two observations, and some, Judge Swain, of what I wanted to make you aware of, has been mooted by the course and direction that the hearing has taken. But one of my purposes of wanting to be heard today was to alert you to the fact that the amended report that the mediation team will be filing no later than February 10th will be addressing what the mediation team believes needs to be done with respect to the Revenue Bond Order.

THE COURT: I'm sorry. Judge Houser, would you hold on just one second? We seem to have a problem with everybody else on Court Solutions just now. So just hang on.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Oh, dear.

THE COURT: Okay. I'm sorry. You just have to sit tight, because we need to have everybody here.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Okay. No problem.

THE COURT: All right. So this is a test. First, Judge Houser, are you still there?

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: I am still here.

THE COURT: Okay. Great.

And now we're going to wait for word from our test remote listeners as to whether they're hearing this colloquy.

COURTROOM DEPUTY: Yes.

THE COURT: Okay. Sounds like everybody can hear, everybody's on board. Thank you all for your patience.

Judge Houser.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Thank you very much. And I'll start over just to facilitate everyone being able to hear.

First, thank you very much for allowing me to participate in this conversation. Secondly, part of the reason why I wanted to be heard today has really been mooted by the direction that the Court has indicated to the parties it intends to go, which of course is quite helpful. But I do

have a couple of observations that I wanted to be sure the Court was aware of. These observations will not come as a surprise to any of the parties that have been speaking with respect to this issue.

The mediation team intends to file its amended report to the Court on or before February 10th. And in that amended report, we will be making very specific recommendations with respect to what we think needs to happen as it relates to the Revenue Bond Interim Order.

Again, this is no surprise to the parties you've been speaking with today, Judge, because in fact, although I will be very careful here, we met with those parties just last week to begin to have that dialogue.

I believe that the Court's tentative rulings at this point will be helpful to the process, but there is more work that needs to be done in hopes that what we report on February 10th may have the support of as many people as possible. In that regard, your tentative rulings or the inclination that you've identified as to where you're going I think will be helpful to the mediation team.

So I have two observations. First, we would be happy to facilitate the meet and confer that the Court is going to require, because, frankly, we will be continuing to have meet and confers with the parties as part of our discussion of the February 10th amended report, and what the recommendations of

the mediation team will be with respect to the Revenue Bond Interim Order, and further processes that should be undertaken by the Court then.

So I think it would be helpful if we participated in that meet and confer, because again, it gets very intertwined in what the amended report will likely say with respect to the Revenue Bond Interim Order.

Secondly, we are also very happy to participate in the work that will be required to try to get to either factual stipulations or limited discovery. And at this point, we are -- I hesitate to say it, but sadly, it's probably true, we are about as familiar with these issues as any other of the parties are. So my hope is that we could be helpful to that process and perhaps, with some luck, avoid the necessity for Judge Dein getting involved on an emergency kind of basis. So we volunteer our services to Judge Swain, you and Judge Dein, to see if we can't be of assistance there as part of that process.

Point three, I agree that leaving a hearing on February 27th will be very helpful. And frankly, I agree that there are gating issues that are extremely important for the parties to get a sense of this Court's view of those issues on. That will not only facilitate the litigation process in these cases but I am actually hopeful that it could be very meaningful to us having the opportunity to make more progress

with these particular claimants and the Oversight Board with respect to the treatment of claims under a plan.

So I am very encouraged by what -- the course these hearings have taken, and I really think it's important that the meet and confers occur. And in hopes that they will be even more productive, the mediation team is happy to participate in that process to see if we can't help streamline these issues and bring them back to the Court both on February 27th and, ultimately, in our amended report that will be filed even before that hearing.

So those are the only comments that I had, Judge. I'm obviously happy to answer any of your questions.

THE COURT: Thank you, Judge Houser. I don't have a question for you now. I guess what I would do is invite the parties to resume their huddle, and then -- no, Mr. Firestein wants to speak?

MR. FIRESTEIN: (Nodding head up and down.)

THE COURT: All right. So, Mr. Firestein.

MR. FIRESTEIN: Thank you, Your Honor. And thank you, Judge Houser. Michael Firestein of Proskauer on behalf of the Board.

So there is one thing that we might want to huddle about, but before we get to that point, we actually do have some consensus relative to a couple of scheduling issues that we think will be instructive both to Magistrate Judge Dein, as

well as to Your Honor, and perhaps as well to Judge Houser. And then I'll cobble on at the end the one sort of huddle issue that we can sort of lay out for the folks. It's in response to what Judge Houser just said.

There is consensus amongst the parties that are in the room representing the monolines that we'd like to tinker a little bit with the briefing deadlines and the hearing dates, which we think are not going to make any difference to the Court we hope. All right?

Currently, and this will also facilitate the meet and confer that we need to have, and, with some benefit, maybe release a little bit of the pressure that Judge Dein might experience --

HONORABLE UNITED STATE MAGISTRATE JUDGE DEIN: (Shaking head from side to side.)

MR. FIRESTEIN: She's shaking her head. But just hear me out. With respect to the calendar, we'd like to push the filing date for our oppositions from tomorrow until Monday. I'm going to give the Court a break, too, on the back end of this, I assure you.

THE COURT: All right.

MR. FIRESTEIN: And the reply that would be due to those oppositions relating to the Lift Stays be pushed a comparable number of days. I don't have the date in my mind, what it is, off the top of my head. Hold on. I actually have

the Order in front of me.

The replies are February 13, so that would be pushed the comparable number of days.

Is the 17th a holiday? Okay. So I'm happy to extend it to the Tuesday, if it's satisfactory to the Court when you hear the other shoe.

THE COURT: All right. So that would be oppositions on February 3rd instead of January 31, right?

MR. FIRESTEIN: Correct.

THE COURT: And then the replies, February 18th, which is a Tuesday, instead of February 13?

MR. FIRESTEIN: Correct. And at the same time, we would suggest, and this is a collective suggestion, that instead of the 27th, that we block the second day of the Omni, on the 5th, for the hearing on the issues that are raised by those papers.

It may or may not mean a short day on the 4th, but there are a number of First Circuit arguments that are sandwiched in and around that, so it gets a little tricky. But another day in Puerto Rico might be helpful.

THE COURT: All right. Do you think we would be able, and this is, frankly, for travel logistics, to cover -- it will be oral arguments still?

MR. FIRESTEIN: Yes.

THE COURT: So we should be able to cover that all

well before noon, so that if people want to get afternoon planes, they can get afternoon planes?

MR. FIRESTEIN: Goodness knows, Your Honor. I would hope that in three hours we could address oral argument as it relates to the narrow issues that are here. I know there's a lot of people that would like to speak, but I suspect much like the way the First Circuit does it, when you find out that you have 20 minutes or 15, you say what you need to say within the parameters that you've been given. So it shall be written, you know.

THE COURT: Yes. I would find it hard to imagine that there would be a need to go past, I'll be generous, two hours on this; but if anybody has a different view, stand up now and waive your hands like a helicopter. Ms. Miller.

MR. FIRESTEIN: I still have the filler for the comment that Judge Houser made. That's all.

MS. MILLER: I don't necessarily have an objection. I guess it raised in my mind the question of procedurally how you're envisioning the hearing proceeding and whether we're imagining, you know, we're going to call CCDA; we're going to argue that; then we're going to close it; call HTA; argue that. It's just what the presentation is.

So I'm just trying to think that on the HTA clawback, I think we probably -- I believe we had 40 minutes a side.

THE COURT: Well, I guess what I typically do is say

each interest block has -- and if it's going to be two hours, I'll say one hour, and leave it to you all to arrange between yourselves how you would present non-duplicative arguments and reserving time for reply for the movants.

MS. MILLER: So there are different movants on different motions here.

THE COURT: Yes.

MS. MILLER: And there are three separate motions. So I guess you're imagining one big argument addressing all three of them, and not slicing it and hearing it sort of CCDA, the CCDA box, HTA in a separate argument --

THE COURT: I was thinking not, because there are some overarching conceptual --

MS. MILLER: Right.

THE COURT: -- aspects to these issues.

And then I understand that the security interest arguments will be peculiar to the documents governing each bond issue. And so I'm kind of imagining this on the fly, but I would imagine that there would be a principal person or people to speak to major conceptual issues, and that those people and others would also have a portion of their allotted argument time that would go to issues that are specific to their security interest claim on their bond issues; but that everybody would be speaking sequentially. So that I'd have a block of presentations by movants, a block of opposition

argument that would engage both the major conceptual issues and the specific distinctions for the different bond issues, and then the replies split up in whatever way you all feel is appropriate, conceptual and specific.

And as I say, I would like to think we could get that done in two hours. You know, please get it done in three. But, you know, I would give an allocation and let you all split it up in there.

MS. MILLER: Okay. I think that makes sense, and I agree. The timing wasn't an issue. It just raised in my mind, I have no idea how we're doing it. I wonder if -- and I'm also thinking on the fly, but since you often issue orders that are very helpful in terms of directing us how the hearing is going to proceed, one way of thinking about it is maybe to have the conceptual issues argued, and then break out the specific ones where we're going to be looking at language and tracking and have that -- instead of everything getting mushed together, have the response broken out and have the argument, opposition and reply. So a block --

THE COURT: How about this. You meet and confer.

MS. MILLER: We'll meet and confer.

THE COURT: I'll look forward to a suggestion in your report.

MS. MILLER: Okay. I have no objection to the three hours.

MR. FIRESTEIN: And, Your Honor, to take even pressure off the Court for this, if this is helpful, frankly, in the absence of having consensus, if the allocation between the two sides is 50/50, we are all grown-ups and we should be able to figure out how we're going to divide up our time to address the issues that we think are important to the Court.

We'll do our best to reach consensus, but I don't think it's necessary for the Court to line the desks up in a row and to worry about that. But of course the Court will have the final say relative to that.

THE COURT: Thank you. I will look forward in the first instance to hearing whatever requests are made in terms of the structure of the argument --

MR. FIRESTEIN: We'll do our darndest.

THE COURT: -- which will be on the morning of March 5th here in Puerto Rico.

MR. FIRESTEIN: Correct.

And the follow-up that relates to the issue that was raised by Judge Houser concerning the mediator's participation in the meet and confer, the meet and confer is sort of ubiquitous terms. There are a few things that are going on here.

And we're quite sensitive to the scheduling requirements that Judge Houser and her team are obliged to place into the amended report. I think, and this is just

speaking for the Board, and a momentary conversation that I had with representatives of AAFAF, I think on the scheduling issues that are necessary for the amended report, that that's certainly workable and we would welcome it.

And the reason why I'm hesitating even slightly is because sometimes it's difficult to get everybody's time together here, and a lot of us have to fly to a lot of different places. And I'm thinking in the first instance, as it relates to the discovery itself, that we ought to at least be afforded the time to speak with our adversaries, and they with us, to see if we can't try to work something out relative to the discrete issues. That's sort of the reason why we have moved the filing dates out and the hearing date out, so we can try to do that. And perhaps in the second instance, right, to try to relieve some pressure that might be on Judge Dein to have to deal with this in the first instance.

We're happy to engage the mediation team for things that we can't work out.

THE COURT: And so, Judge Houser, is it all right with you if the parties reach out to you at the time they believe is appropriate, and if they've decided they're good on their own, they'll reach out to you and tell you that, too?

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Look, if they -- my experience has been they've got difficulty coming to agreement with each other.

THE COURT: Oh, don't be such a pessimist.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: If they can do it on their own, terrific, but if they can't, then I'm going to push to make them try to find solutions. So I'm perfectly fine them trying to do this on their own in the first instance, but if history is a predictor of the future, they will not make progress without someone else in the room helping.

THE COURT: So I think I'm hearing --

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: I hope I'm wrong.

THE COURT: I think I'm hearing you saying something like if you have not heard anything from somebody by the end of next week, you're probably going to start checking in?

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: If not sooner, yes.

THE COURT: Okay.

MR. FIRESTEIN: Well, it's easy to do, Your Honor, because we already have the initial meet and confer set pursuant to the Court's Order that was issued last week. So there is a timeline that we're quite cognizant of.

And we welcome Judge Houser's check-ins at any time that she wishes to do so to help us along the path, but I do believe that --

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

HOUSER: And, frankly, just let me be clear, my report's due February 10th. I'm going to be addressing schedules, so we don't have until the end of next week to see if they can come to agreement among themselves in my opinion.

MR. FIRESTEIN: I made a different observation. I'm talking about -- I'm separating discovery and schedule.

I think in terms of the scheduling of this stuff, I don't -- this, again, speaking for myself on behalf of my client, I don't have a problem with trying to understand what the schedule is that Judge Houser was thinking of and her facilitating that, because that for sure is going to be inclusive in her amended report which is due on the 10th. And we might as well all get on the same page, if we can, well in advance of that.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Exactly.

THE COURT: Okay. Just one thing. Thinking about the next Omni and the 5th, I talked about the morning thinking it would be great for everybody to feel pretty comfortable they can leave in the afternoon if that's what they want to do, but I am reminding myself I think that we certainly will have the discussion regarding the mediation team's interim report scheduled for the 4th. And in December that took a long time.

I think we also have scheduled oral arguments on the

fuel line lenders and the unions, priority arguments in connection with PREPA. There are objections to claims, and, you know, who knows what else is going to be hung on the tree in advance of the Omni. So I wouldn't buy any non-refundable -- run out and buy non-refundable tickets for the three o'clock flight on the afternoon of the 5th.

My team and I will do what it takes to hear everything that needs to be heard on the 5th, but I'm no longer as excited about the two o'clock plane.

MR. FIRESTEIN: At long last, after a few years of these Omnibus hearings, one will go the second day. So I don't know that that's --

THE COURT: I think we have had another one go the second day, but it's been rare.

MR. FIRESTEIN: That's all I have, Your Honor. Otherwise, the comments that the Court made of its inclination about the modifications to the Order are acceptable to the Board.

THE COURT: Thank you.

Judge Houser, anything further?

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: No, ma'am. Thank you.

THE COURT: All right. Thank you.

And thank you, everyone. And I will do that interim revision of the Interim Order. We'll get that filed by the

end of the week, but you all know what it says. And you've got your meet and confer obligations. So I'll look forward to hearing from you out of that.

All right. I think we had --

MR. FIRESTEIN: Your Honor.

THE COURT: Yes.

MR. FIRESTEIN: This is not a merits based observation, but somebody noted to me in the courtroom that when you initially called Judge Houser, her -- the voicemail that came on recited her cell phone into the record. And if there's a way I just think for public -- we've never had a redaction, but if there's a way to just not necessarily transcribe her cell phone number into the record, it might be useful.

THE COURT: Yes. I direct the court reporter not to reflect the cell phone number in the record.

And thank you for noticing that. I was focused on the fact it was voicemail, and I wasn't listening to what it was saying.

MR. FIRESTEIN: I can't take credit for noticing it, but the person who did will.

THE COURT: I'm sure that Judge Houser's grateful for that, too.

HONORABLE UNITED STATES BANKRUPTCY COURT CHIEF JUDGE HOUSER: Thank you very much. Although so many of you already

have that number.

THE COURT: Okay. So I have lost my Agenda script, but I think that there was one contested Lift Stay on it.

All right. So that's item III.6. And Ms. Stafford, are you taking care of that?

MS. STAFFORD: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. STAFFORD: Laura Stafford from Proskauer on behalf of the Financial Oversight and Management Board of Puerto Rico.

This is the 102nd Omnibus Objection to Claims, which seeks to disallow in their entirety a number of Proofs of Claim that failed to provide a basis for asserting liability against the debtors. A number of responses to this --

THE COURT: Just one second.

Mr. Firestein and Mr. Bienenstock, I'm not picking up your words, but I'm getting a lot of rumbling from your table. Thank you.

Ms. Stafford.

MS. STAFFORD: So a number of Responses to this Objection were filed, all but one of which were adjourned to the March 24th Omnibus Hearing. With respect to the one remaining response which was filed by Aracelis Nazario Torres, and it's Proof of Claim number 11823 at ECF number 9963.

In her Response, Ms. Nazario Torres provided

documentation that indicated ownership of a bond bearing a CUSIP number that is associated with a pension funding bond, Series A 2008 bond, which is covered by a Master Proof of Claim filed by Bank of New York Mellon on behalf of the holders of Series A 2008 bonds. And so we'd request that the Court grant the objection and disallow Ms. Nazario Torres' claim notwithstanding the Response.

THE COURT: And is Ms. Nazario Torres here to be heard?

(No response.)

THE COURT: All right. Based on the duplication of the CUSIP number with the Master Proof of Claim, the objection to the Nazario Torres claim is sustained. And you will submit an Order reflecting that?

MS. STAFFORD: We will do so, Your Honor.

And just for clarity of the record, this Omnibus Objection, like the earlier ones, also had additional Responses that came in between the last adjournment and this adjournment that we would like to adjourn. So as we are doing with the ones from this morning, we will provide updated schedules and a revised Proposed Order for the Court.

THE COURT: And so the 102nd Omnibus Objection is sustained as to all of the non-responding claimants and Ms. Nazario Torres, and the Oversight Board, with its Proposed Order, will provide a schedule specifying the claims that are

affected by that Order.

MS. STAFFORD: We will do so. Thank you so much, Your Honor.

THE COURT: Thank you, Ms. Stafford.

So that brings me to the end of the prepared Agenda, and I thank you all. The next scheduled hearing date is the March 4th Omni, to be followed by or to include the revenue bond lift stay hearing on March 5th.

And as always, my deepest thanks go out to the court staff in Puerto Rico, Boston and New York for all of their work in enabling us to do all of this work, and their superb ongoing support of these complex cases. And my thoughts are with the people of this island as they continue to cope with life that includes earthquakes.

So thank you all. Safe travels, and keep well. We are adjourned.

(At 3:53 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 194 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain, and the Honorable United States Magistrate Judge Judith Gail Dein on January 29, 2020.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter